







Law  
Eng  
P5577s

# STATE TRIALS;

OR,

A COLLECTION

OF

*THE MOST INTERESTING TRIALS,*

PRIOR TO THE REVOLUTION OF 1688,

REVIEWED AND ILLUSTRATED,

BY

SAMUEL MARCH PHILLIPPS, Esq.

OF THE INNER TEMPLE.

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IN TWO VOLUMES.

VOL. I.

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STATE THE

A COLLECTION OF  
THE MOST INTERESTING  
AND IMPORTANT  
DOCUMENTS  
RELATIVE TO THE  
HISTORY OF THE  
UNION OF THE  
KINGDOMS OF  
ENGLAND AND  
SCOTLAND  
IN THE  
SEVENTEENTH  
CENTURY

SAMUEL JOHNSON

IN TWO VOLUMES

VOL. I.

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TO  
**SIR JOHN RICHARDSON,**

LATE ONE OF HIS MAJESTY'S JUSTICES  
OF THE COURT OF COMMON PLEAS,

*This Work is inscribed,*

WITH EVERY SENTIMENT  
OF RESPECT, ESTEEM, AND REGARD,

BY  
THE AUTHOR.

SIR JOHN RICHARDSON

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## P R E F A C E.

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THE following work contains a select number of the English State Trials, from an early period to the era of the Revolution. The case of Sir Nicholas Throckmorton, the first in the selection, is the oldest on record, which reports the evidence in detail, or which gives any full narrative of the proceedings. There are two cases, of still more ancient date, and of some celebrity, which are here omitted; because they are chiefly composed of controversial discussions on the doctrines of the Church. One of them is the case of Lord Cobham, a warrior and martyr, in the reign of Henry the fifth; the other, that of Sir Thomas More,

not less a martyr to his faith, in the reign of Henry VIII. The proceedings against Lord Cobham have been excellently related by Dr. Milner in his History of the Church. And a still more distinguished living writer, on the same subject, has given a new interest to the trials of both these illustrious men.

Commencing with the case of Sir Nicholas Throckmorton, this selection comprehends all the early trials of the greatest interest and importance; and concludes with the case of the seven Bishops, which occurred on the eve of the Revolution. The proceedings against Charles I. — which can in no proper sense be called a trial — have for that reason been omitted; but the most striking incidents which occurred in them, are related in the trial of Cook. Of the numerous trials, connected with the Popish Plot, only two are included: Stayley's case, which was the first; and the case of Lord Stafford, which is the last of the series, and which gives a full



and general view of the proofs, upon which the alleged conspiracy against the Protestants was attempted to be established.

Every reader of the early state trials must have often felt himself embarrassed by the prolixity and confusion, in which the proceedings are involved. One who is not familiar with such subjects, would frequently find himself bewildered; and even a person conversant with legal investigations, may sometimes require a clue, to guide his course. One of the objects, therefore, of the present work has been, to give a clearer and more comprehensive view of the several cases, by retrenching what is superfluous and irrelevant, and reducing into order all that is material.

The most difficult and important part of such an undertaking, is the inquiry after truth, and an impartial statement of the fair result of evidence. How far I may have succeeded in this part of my task, it will be for others to decide.

Perhaps, I may be allowed to say, that I have given to this inquiry all the consideration in my power, and that my first wish has been to exercise an unprejudiced and dispassionate judgment.

It is hoped, that some good purposes may be answered, by bringing more fully before the public view, cases which are of great celebrity, and intimately connected with the annals of our country. The study of the law is ennobled by an alliance with history. And the unprofessional reader may, perhaps, derive from a legal scrutiny more just ideas and more accurate information. There is scarcely one of the trials, which does not exhibit some striking and affecting traits of character. Such traits abound in the case of Lord Stafford, in Lord Russell's, in the Earl of Strafford's, and in that of Algernon Sydney. Some of the speeches, also, which were made by the accused in their own defence, are distinguished by a very high and impassioned strain of eloquence.



But the most valuable information, to be derived from the perusal of the State Trials, relates to the administration of justice. We may there see, how the law was dispensed in state-prosecutions, through a long series of ages. In the earlier periods, these proceedings were conducted without any regard to truth ; and it would be difficult to name a trial not marked by some violation of the first principles of criminal justice. If this view is dark in the distance, it is bright and consolatory in nearer times. Immediately after the Revolution of 1688, our courts of justice acquired a new character, which has been advancing and improving to the present age. In comparing the two periods, which preceded and followed that event, and surveying the systems established before and afterwards, the contrast will appear most striking in these particulars :—the deportment of the Judges towards the accused, the tone and temper of their addresses to the jury, the practice in respect

of the reception of evidence, and the exposition of the law of treason. In regard to this last particular, the reader will perceive (if I am not mistaken), from observations made in the course of the work, that some important doctrines have been laid down on the broadest and soundest principles, and most favorably to the subject, in the latest state trials which have occurred.

The survey of former times, which the author has here attempted to exhibit, while it must excite no small degree of disapprobation of the judicial principles and practice which then prevailed, cannot fail at the same time to awaken respect and admiration for the system, which superseded that course of injustice, and which has ever since been gradually and steadily advancing towards perfection.

*January 17th, 1826.*



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## ERRATA IN VOL. I.

- Page 274. line 2. *for xecutive read executive.*  
 304. note, line 2. & 3. *for Keyling read Kelyng.*  
 316. note ‡, line 4. & 5. *for Bensed read Benstead.*  
 324. line 22. *for Scroggs read Kelyng.*  
 349. line 8. *for note B. p. 340. read note B. p. 338.*  
 461. line 21. *for consumate read consummate.*  
 467. line 18. *after for insert the.*  
 474. line 1. *for facinerosos read facinorosos.*

## ERRATA IN VOL. II.

214. line 12. *for Sir W. Jones read Sir Thomas Jones.*  
 238. line 18. *for prisioner read Peer.*



THE TRIAL  
OF  
SIR NICHOLAS THROCKMORTON,  
IN THE GUILDHALL OF LONDON,  
FOR  
HIGH TREASON,

1 Mary. April, 17, 1554. — 1 *Howell, St. Tr.* 870.

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SIR Nicholas Throckmorton was charged with being engaged in the rebellion of Sir Thomas Wyatt. That rebellion, it is well known, broke out soon after the accession of Mary to the throne: and had for its cause or its pretext the projected union between the Queen and Philip of Spain. Throckmorton was tried under a special commission, on a charge of High Treason, for imagining the death of the Queen, levying war in the realm, and adhering to the Queen's enemies. The overt acts of these treasons, charged in the indictment, were the conspiring to deprive the Queen of her royal estate, and the devising a plan to seize the Tower of London. The trial was particularly remarkable for the eminent cou-

rage and eloquence which the prisoner displayed in his defence.

P. 871. Before any evidence was produced, Throckmorton dexterously availed himself of an early opportunity to produce an impression on the jury. Having observed one of the judges conferring with the Attorney General respecting the jury panel, just as a challenge was on the point of being made, — “I trust,” he said, “you have not provided for me this day, as in times past, I knew another gentleman, occupying this woeful place, was provided for. It chanced, one of the justices, upon jealousy of the prisoner’s acquittal for the goodness of his cause, said to another of his companions, a justice, when the jury did appear, ‘I like not this jury for our purpose, they seem to be too pitiful, and too charitable, to condemn the prisoner.’ ‘No, no,’ said the other judge, whose name was Cholmley, ‘I warrant you, they be picked fellows for the nonce; he shall drink of the same cup, his fellows have done.’ I was then a looker on of the pageant, as others are now here; but, now, woe is me, I am a player in that woeful tragedy. Well — for these, and such other like, the black ox hath of late trodden on some of their feet. But my trust is, I shall not be so used.” The judge alluded to was one of the judges presiding on this trial.

The Queen's counsel, Stanford, then pre- P. 872.  
sented himself to open the case, when Throckmorton came forward, and made another well-timed and effective speech. "And it may please you, master serjeant, and the others, my masters, of the Queen's learned counsel, as I here minded to have said a few words to the commissioners, if I might have had leave, for their better remembrance of their duties in this place of justice, and concerning direct indifferency to be used towards me this day : so, by your patience, I do think good to say somewhat to you, and to the rest of the Queen's learned counsel appointed to give evidence against me ; and albeit you and the rest by order be appointed to give evidence against me, and entertained to set forth the depositions and matter against me, yet I pray you remember, I am not alienate from you, but that I am your Christian brother. Neither are you so charged, but you ought to consider equity ; nor yet so privileged, but that you have a duty of God appointed you, how you shall do your office, which if you exceed, will be grievously required at your hands. It is lawful for you to use your gifts, which, I know, God hath largely given you, as your learning, art, and eloquence, so as thereby



you do not seduce the minds of the simple and unlearned jury, to credit matters otherwise than they be. For, master serjeant, I know, how by persuasions, enforcements, presumptions, applying, implying, inferring, conjecturing, deducing of arguments, wresting and exceeding the law, the circumstances, depositions and confessions, unlearned men may be enchanted to think, and judge those that be things indifferent, or at the worst but oversights, to be great treasons ; such powers orators have, and such ignorance the unlearned have. Almighty God, by the mouth of his prophet doth conclude such advocates be cursed, speaking these words, ‘Cursed be he, that doth his office craftily, corruptly, and maliciously.’ And consider, alas, that my blood shall be required at your hands, and punished in you and yours, to the third and fourth generation.”

Evidence. The counsel for the crown then brought forward their evidence, in support of the prosecution ; which consisted entirely of examinations and confessions. First, a confession

P. 873. by Winter was read, from which it appeared, that he had casually met with Throckmorton ; and that having mentioned to him, in the course of conversation, Sir Thomas Wyat’s

apprehensions on the arrival of the Spaniards, and the opinion of Sir Thomas Wyatt, that it would be advisable to take the Tower of London by stratagem, before the arrival of the Spanish prince, Throckmorton only replied, on being asked his opinion, that he disliked the thing in many respects. It appeared, also, that on another occasion Throckmorton informed Winter of Sir Thomas Wyatt's having altered his design as to the taking of the Tower. This latter part of the deposition, relating to the supposed alteration in Sir Thomas Wyatt's plans, was much pressed against the prisoner, as showing, that he was privy to Wyatt's design, and that some information was passing from the one to the other. But Throckmorton denied having made any such communication to Winter; "And what," he P. 875. added, "if I did know, that Wyatt repented him of an ill-advised enterprise? What doth this prove against me? Is it sin, to know Wyatt's repentance? No! It is but a venial sin; if it be any, it is not deadly. But where is the messenger, or message, that Wyatt sent to me, touching his alteration? And yet, it was lawful enough for me to hear from Wyatt at that time, as from any other man, for any act that I knew he had done."

Down to this point of the trial, it is certain nothing material was proved against the prisoner.

- P. 876. The next piece of evidence was the confession of Vaughan, who had been tried, and condemned for his share in Wyatt's rebellion. Vaughan stated in this confession, that he had met Throckmorton several times. The first time, he told Throckmorton, that, if the other counties disliked the Spanish match, and the arrival of the Spaniards, as much as it was disliked by the people of Kent, they would be hardly welcome. At the second meeting, Throckmorton, alluding to the former conversation, told Vaughan, that the Western men were in readiness to come forward, and that Sir P. Caroe had in order a good band of horsemen and another band of footmen. He expressed also some concern at the unwillingness to move, shown by the Earl of Devon. On another occasion, Throckmorton informed Vaughan, that he had sent a despatch to Sir P. Caroe, calling upon him to bring forward his force with all speed, and had advised him to encourage Sir T. Wyatt to seize the present moment and come forward with all his power, as
- P. 878. the people of London would take his part. To confirm this statement, the convict himself was



brought into open court, and sworn to the truth of his confession. In vain did Throckmorton protest against such proof; insisting, that a man attainted of treason was not a legal witness, and that the confession of another person could not be legally admitted as evidence against him. "Remember, I pray you," he said, in conclusion, "how long, and how many times, Vaughan's execution hath been respited, and how often he hath been conjured to accuse, which by God's grace he withstood until the last hour, when, perceiving there was no way to live but to speak against me or some other, his former grace being taken away, he did redeem his life most unjustly and shamefully, as you see." The court, however, paid no regard to this just exception taken by the prisoner, and admitted the confession.

The examination of Throckmorton himself P. 882. was then produced, and partially read. He insisted, that it should not be taken in parts; but that the whole ought to be read together in the usual manner. This was refused; the Queen's counsel pretending, it would only be loss of time, and that they had other things to charge against him. The court acquiesced; and only such parts of the examination were

read, as appeared most likely to prejudice the prisoner. It contained, however, little or nothing material, and consisted principally of a narrative of some general conversations with several of his acquaintances, in which he had expressed his apprehensions on the subject of the Queen's marriage with the prince of Spain, and on the expected visit of the Spaniards to this country.

P. 883. After this, the Queen's counsel read a confession of the Duke of Suffolk, who had been attainted, and executed as a principal in Wyatt's rebellion. It only stated some information as to Throckmorton's intentions, said to have been communicated to the Duke by Lord Thomas Grey, who was then alive. This statement, being merely hearsay, ought not to have been received; and so Throckmorton insisted, demanding that Lord Thomas Grey should himself be brought forward to speak openly what he had to say against him. Another objection to the admissibility of every part of this confession was, that it had been received from a person under attainder, and therefore utterly incompetent to give evidence.

P. 884. The only other piece of evidence produced at the trial, was the confession of one Arnold, who appears, from the report, to have said ab-

solutely nothing, that could in any degree affect the prisoner. Throckmorton is represented in the confession as having mentioned a circumstance respecting a person of the name of Fitzwilliams. This person happened to be present in court, when the confession was read over; and, on hearing his name, presented himself as a witness on the behalf of the prisoner, to depose what he knew of the matter.

All the evidence against the prisoner having been now exhausted, and the case on the part of the prosecution being closed, this was the proper moment for receiving evidence on the part of the prisoner. Throckmorton desired, that the witness might be permitted to speak. "I pray you my lords," said the attorney general, "suffer him not to be sworn, neither to speak." "Who called you hither (said the Master of the Rolls, one of the judges in the commission), or who commanded you to speak; you are a very busy officer." "I called him," answered Throckmorton, "and do humbly desire, that he may speak and be heard, as well as Vaughan, or else I am not indifferently used; especially since Mr. Attorney doth so press this matter against me." "Go your ways (said another of the commissioners, who was a privy counsellor),

Defence. P. 884.



the court hath nothing to do with you. Peradventure you would not be so ready in a good cause." Throckmorton, in his defence, alluding to this rejection of his witness, mentioned an anecdote, highly honourable to the Queen, which deserved to have been better

P. 887. remembered by her judges: "When the Chief Justice was called to his honourable office, the Queen charged and enjoined him, amongst other good instructions, to minister the law and justice indifferently, without respect of persons; and notwithstanding the old error, which did not admit any witness to speak or any other matter to be heard in favour of the adversary, Her Majesty being the party, the Queen's pleasure was, that whatsoever could be brought in favour of the subject, should be admitted to be heard; and especially, that all her justices should not persuade themselves to sit in judgment otherwise for Her Majesty than for her subjects."

Throckmorton strenuously insisted, before the court and the jury, that the written examinations ought not to be admitted in evidence against him, but that the witnesses should be brought before him, face to face; and he referred to the statute of Edw. 6., as expressly requiring in all cases of treason (unless the

party accused should confess the crime), that the accusers or witnesses should be brought in person before the accused at the time of his arraignment, to prove his guilt. The court, however, without giving any answer to this objection, which was, in truth, unanswerable, admitted all the examinations in evidence. He insisted, also, that the mere act of procuring a person to commit treason would not of P. 894. itself be treason, and that even if he had been proved to have induced and procured Sir T. Wyat to levy war or commit any other treason, (which, he maintained, had not been proved,) still he was not guilty of treason within the true construction of the statute of Edw. 3.; "for that statute," he said, "does not expressly include such act of procuring, and ought not to be extended beyond what the plain letter of the act will warrant." But the court properly determined, that there are no accessaries in treason, as in other offences; that all are principals; and that any person offending in treason, either by overt-act or by procurement, whereupon an open deed has ensued, is adjudged by the law to be a principal traitor. This resolution was warranted by some earlier decisions, and has been ever since adopted as a first principle. \*

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\* This point is reported in Dyer, 98. b.

P. 895. The prisoner, in his defence, further insisted, that there was not the slightest proof of that part of the indictment, which charged him with adhering to the Queen's enemies, and giving them aid within the realm; for that Sir T. Wyatt (to whom it was said he had adhered) was not within the description of an *enemy*, nor had he collected any force till long after the time of the conversations referred to in the examinations. But the court held, that "Wyatt was the Queen's enemy within the realm, as the whole realm knew to be true, and so Wyatt himself had confessed." This decision was undoubtedly wrong, for the term *enemy*, in the statute of treasons, must be understood to apply only to the subjects of a foreign power with whom this country is at open war.\*

P. 897. The jury were charged by the Lord Chief Justice Bromley, whose summing up of the evidence is not preserved. The report only states, that "he remembered particularly all the depositions and evidence given against the prisoner; and, either for want of good memory or good will, the prisoner's answers were in part not recited; whereupon the prisoner craved indifference, and helped the judge's old memory with his own recital." As the

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\* See 1 Hale, P. C. 159. 164. 3 Inst. 10.



jury were retiring to consider the evidence, Throckmorton begged the court to give order, that no person should have access or conference with them; and that none of the Queen's counsel be suffered to repair to them, or talk with any of them, until they present themselves in open court to publish their verdict. The jury debated the case, apart, for some hours; and at length the foreman delivered the unanimous verdict of "Not Guilty." "How say P. 899. the rest of ye, asked the Lord Chief Justice Bromley, is that the verdict of you all." They answered, that it was. "Remember yourselves better," replied the Lord Chief Justice, "have you considered substantially the whole evidence, in sort as it was declared and recited? The matter doth touch the Queen's highness, and yourselves also. Take good heed what you do." "My lord," said the foreman, "we have thoroughly considered the evidence laid against the prisoner, and his answer to all those matters; and accordingly we have found him not guilty, agreeably to all our consciences." Throckmorton now applied for his discharge; upon which the commissioners consulted together, and the chief justice, Sir Thomas Bromley, remanded him to the custody of the lieutenant of the Tower,

on the plea, "that there were other matters to be charged against him," although no charge had been suggested by the attorney general. [NOTE A.]

Another, and, if possible, a worse act of injustice closed the business of the day. It was not to be expected, in those times of oppression, when unhappily even courts of justice were subservient to the will of corrupt ministers, that a jury, who had the courage to acquit on a charge of high treason, against the wishes of the judge, and in the presence of some of the Queen's privy council, should be suffered to escape untouched. The Attorney General, Griffin, prayed the court, that the jury for their acquittal of the prisoner should be bound in recognizances, to answer any charge, which might be brought against them on the Queen's behalf. The court granted even more than was desired, and committed the jury to prison. After an imprisonment of six months, four of the jury, who submitted, were dismissed; the remaining eight, protesting that they had acted to the best of their judgment and consciences, were grievously fined; the foreman, and another, to pay, each of them, two thousand pounds; the others to pay a thousand marks

each. They were then re-committed. At length five out of the eight, after lying in prison two months longer, were dismissed on payment of their fines ; the rest, not being able to pay the whole, were excused a part, and discharged.

On a general review of this trial, the reader will be struck, in the first place, with the total want of order and regularity in the course of proceeding. The counsel for the crown do not appear to have made any statement in opening the case, but contented themselves with a broad assertion of the prisoner's guilt : they continually questioned the prisoner respecting the several parts of his conduct, with the design of supplying the deficiency of their own proof, by his admissions : they frequently made interlocutory speeches, on the several facts, as they successively appeared in evidence, pressing them against the prisoner with great exaggeration. The utter disregard of the first principles of evidence is another striking feature of the state trials of that period. In violation of the express injunctions of a statute\*, not older than the preceding reign,

Remarks.

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\* See stat. 5 & 6 Ed. 6. c. 11. s. 12.



the judges refused to allow the witnesses to be confronted with the prisoner, and admitted examinations, taken in the prisoner's absence; they went even further, and admitted in evidence the confessions of accomplices, who had been convicted and attainted. [NOTE B.] To complete the measure of injustice, they refused to allow witnesses to be heard on behalf of the prisoner; thus not only giving the utmost latitude to every mode of attack, but excluding also all possibility of defence. [NOTE C.] This was the worst of all their acts of injustice, a proceeding repugnant to the common feelings of humanity, and inconsistent with the first and plainest principles of natural equity.

The arbitrary power, exercised by the courts at that period, of fining juries for their verdicts, was fatal to the administration of justice, and destructive of the most valuable part of the constitution. The only security, then to be expected, for life or liberty, was to be found in the trial by jury; and if this noble institution had been allowed the full exercise of its rights, it had doubtless proved a sure refuge and support against the jealousy of a despotic court, and the servile compliance of dependent judges. But no

hope of safety remained, when the acquittal of a prisoner led to the imprisonment of the jury. A verdict was no longer the judgment of twelve freemen upon their oaths, but the mere echo of the direction of the judge. Juries thus became mere ciphers; and as subservient to the will of the judges, as these were to the wishes of the court. The fatal effects of such a system of intimidation are obvious; and they were unfortunately experienced, soon after this trial, in the case of Sir Nicholas Throckmorton's brother, who, as history relates, was tried and convicted on the same evidence, upon which the elder brother had been before most justly acquitted. It was not until some time after the restoration, that this unconstitutional practice, of fining juries for their verdicts, was declared to be illegal. Sir Mathew Hale refers to a case, which occurred in the 17th of Ch. II., in which all the judges, with the exception of one only, decided that such a fine was against law. [NOTE D.] But this decision seems not to have been generally acted upon; for, within a very few years afterwards, another instance occurred, of fining a jury for their verdict; when the question was again solemnly argued, and the

illegality of the practice again declared. [NOTE E.] The severe and arbitrary treatment of the jury, in this instance, was the more inexcusable, as it was scarcely possible for men of conscience and understanding to entertain any serious doubt of the prisoner's innocence.



## NOTES.

## NOTE A. p. 14.

THROCKMORTON was released from prison in the course of the year, through the interest of Philip. In the succeeding reign he distinguished himself as ambassador to the courts of France and Scotland.

Colonel Lilburne, who was tried for high treason in the time of the Commonwealth, and acquitted by the jury to the great mortification of the Protector, was committed to prison immediately on his acquittal, and there detained for a considerable time. See Colonel Lilburne's Case, in 4 Howell, 1404.

## NOTE B. p. 16.

The receiving of confessions, as evidence against third persons, appears to have been an inveterate practice through the reigns of Elizabeth, James, and Charles the First. Early in the reign of Charles the Second, the judges resolved, that a confession could be evidence only against the party confessing, not against any other persons. See the 5th Resolution in Tong's Case, Kelyng's Reports, 18.

## NOTE C. p. 16.

It was not until the 1st of Ann. st. 2. c. 9. that, in all cases of treason and felony, witnesses for the prisoner were allowed to be examined upon oath. See 4 Black. Com. 360.

## NOTE D. p. 17.

Wagstaff's Case, 2 Hale, P. C. 312. Chief Justice Kelyng, in his reports, mentions an instance of his fining a jury, for delivering what he conceived to be a wrong verdict. See Kel. Rep. 50., and note in 6 Howel, p. 992. This practice of the Chief Justice Kelyng was complained of in parliament, and declared to be illegal. *Die Veneris*, 13th December, 1667. See Hatsell's Prec. vol. iv. p. 113. See also a dialogue between a barrister at law and a juryman, on the duties of a jury, published in 1680, to be found in the twelfth volume of a collection of Tracts in the library of the Inner Temple. In the case of Colonel Lilburne, who was tried for high treason in the time of the commonwealth in the year 1649, and again in 1653 for returning from transportation, the jury on each trial acquitted; for the second acquittal they were sharply examined before the Protector's council of state, when they declared, that they had discharged their conscience, and would give no other answer. It does not appear that they were fined. See Lilburne's Case, 5 Howell, 407.

## NOTE E. p. 18.

Bushell's Case, Vaughan, Rep. 135, 2 Jon. 16. S. C. The former is much the best and fullest report. Bushell was one of the jury, who brought in a verdict of Not Guilty in the case of Penn and Mead; for which verdict each juryman was fined forty marks, and ordered to be imprisoned till the fine should be paid. See Report of this Case in 6 Howell, 968.

THE TRIAL  
OF  
THE DUKE OF NORFOLK,  
BEFORE THE LORDS AT WESTMINSTER,  
FOR  
HIGH TREASON.

14 Eliz. Jan. 26, 1571.—1 *Howell*, 958.

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THE Duke of Norfolk, as the reader may P. 959. remember, engaged in a scheme for marrying the Queen of Scots, soon after her imprisonment. For this he had been early committed to the Tower: but was afterwards released on giving his promise never to renew the negociation. Unfortunately, he allowed himself to be again drawn into a correspondence with the captive Princess; again entered into a treaty of marriage; and was by degrees led to give his consent to the projects of a deep-laid conspiracy. The Duke was tried on a charge of High Treason in the court of the Lord High Steward. The Earl of Shrewsbury presided as High Steward; and twenty-six Peers attended on his summons. The indict-



ment, which had been found by a grand jury of the county of Middlesex, charged the Duke with imagining the death of the Queen, and conspiring to deprive her of her regal power and dignity; it further charged him with conspiring to excite rebellion, to levy war within the kingdom, and to overthrow the government. The principal overt act, laid in the indictment, was, that the Duke of Norfolk, knowing that the Queen of Scotland had claimed possession of the crown of England as her right, and knowing that she had usurped the regal name and arms of the kingdom of England, had endeavoured, without the consent of the Queen of England, to marry the Queen of Scotland and advance her title to the crown, and, in prosecution of that design, that he wrote letters to the Queen of Scotland, and supplied her with money. Another overt act, charged in the indictment, was, that the Duke, with the Earl of Northumberland and other traitors assembled together in arms, prepared to carry on open war against the Queen, and to execute the aforesaid treasons and conspiracies. A third overt act, laid in the indictment, was that he had traitorously adhered to, aided, and assisted some of the subjects of the Scottish

Queen, who were public enemies of the Queen of England. A fourth overt-act was, that he sent Rodolphi over to the continent to the Pope the Duke of Alva, and the King of Spain, for the purpose of inviting them to invade this kingdom; and that he engaged with Rodolphi to raise a large force, with which he was to join the Spanish army, and rescue the Scottish Queen from her imprisonment. A fifth overt-act, charged in the indictment, was, that the duke carried on a traitorous correspondence with Rodolphi and through his agency with the King of Spain, respecting the intended rescue of the Scottish Queen, and for making preparations to assist the Duke of Alva in his invasion of this kingdom.

When the indictment had been read, the Duke requested to have counsel allowed him for his defence, but the Lord Chief Justice Catlin said, "that this was contrary to the practice and could not be allowed, that he was to answer to his own fact only, which he himself best knew, and might without counsel sufficiently answer." The Duke then inquired, whether the indictment was sufficient; upon which the chief justice informed him, that all the judges had well considered the indictment, and with one assent had resolved, that if the

facts charged were proved to be true, the indictment was in every respect sufficient. [NOTE A.]

P. 967. The Duke, having pleaded to the indictment, addressed himself to his peers, entreating of them a favourable and equitable hearing. "I am to make," he said, "two suits; the one to your grace, my Lord High Steward, that as your place requireth you to do justice, so it may please you to extend to me your lawful favour, that I may have justice, and that I may not be overlaid in speeches: my memory was never good, it is now much worse than it was; sore troubles, sore cares, closeness in prison, evil rest, have much decayed my memory; so as I pray God, that this day it fail me not, and another time I will forgive it: I beseech this of you, my Lord High Steward.

"Yet one request more I beseech of you, my Peers, which I with favour may ask, and you with justice may grant. Unhappy man that I am, though I have to this indictment pleaded not guilty of the treasons therein objected against me; yet I confess, as I have with all humility and with tears confessed, and as some of you, my Lords, here present, can witness, that I have neglected my duty to the Queen's most excellent majesty, in cases inferior to treason, and that are no parts of



treason: I have laid them at Her Majesty's feet, and poured them forth before her in confession, so far as my conscience will suffer me to declare. Let, I beseech you, neither my confession, already made, of inferior faults, that are not in the compass of treason — nor, if I shall now in mine answers confess them again, if they be objected against me — lead you to judge the worse of me in the greater case."

The Queen's serjeant opened the case P. 968.  
against the prisoner, confining himself principally to a statement of the substance of the indictment. The counsel for the crown then began, by questioning the Duke, as to his P. 972.  
knowledge of one of the most material facts, charged in the indictment, namely, whether the Queen of Scotland had claimed, as her right, the possession of the crown of England. He entreated that he might not be pressed to make a confession. — "You handle me hardly," he said, "you would trap me by circumstances, and infer upon me, that she was the Queen's enemy; and so would make me a traitor." The Lord High Steward, however, compelled him to answer. And after a long cross-examination of the prisoner, and many strained inferences, the counsel for the crown, concluded thus: "Now have you confessed far

enough; that you knew, she pretended title to the present possession of the crown, and usurped the regal stile of the realm."

P. 975. The written examination of Lesley, Bishop of Ross, and the Scottish Queen's ambassador, who had been committed to the Tower on suspicion of being implicated in Norfolk's conspiracy, was produced in evidence, and read. It appeared from this examination, that the Duke had often expressed his good-will towards the Queen of Scotland, and had instructed Lesley, to make proposals of marriage to her in his name.

P. 979.  
398. The next piece of evidence, if such it may be called, was a letter of the Earl of Murray, Regent of Scotland, in answer to a letter from Elizabeth's ministers, which required him to give an account of the conduct of the Duke of Norfolk, as commissioner between the two kingdoms, and to state also what he knew of the Duke's intentions on the subject of a marriage with the Scottish Queen. Murray, in his letter, states what passed on an interview between him and the Duke; when, it seems, the subject of a marriage with the Queen of Scotland was artfully insinuated by Murray, and the assent of the Duke may be inferred, though it was not expressly declared. Murray, having intimated to the Duke, that there

was no person in the kingdom whom he thought so worthy of an alliance with the Queen ; the Duke replied, " Thou knowest of me that, of which I will make none privy in England or in Scotland, and thou hast Norfolk's life in thy hands."

The next document, produced in evidence, P. 986. was a paper said to have been received from the Regent of Scotland, and purporting to be a copy of a letter written to him by the Duke. This document, though manifestly inadmissible, was admitted and read, on the mere statement of the counsel, that they had not the original letter. The Duke declared, in this letter, that he would never retract, and was resolved to persist in soliciting the Queen's hand in marriage.

After this, the confession of Bannister, one of the Duke's servants, who had confessed upon the rack, was given in evidence. P. 992. " Bannister," said the Duke, " was shrewdly cramped, when he told that tale. I beseech you, let me have him brought face to face." [NOTE B.] This, however, was refused. The Duke also demanded, that Liddington and the Bishop of Ross should be confronted with him ; " I pray you," said the Duke, " let them be brought face to face, I have often required it, and the law, I trust, is so." This demand was again peremptorily refused. " The law was



so for a time;" said the counsel for the Crown; "but it hath been found too hard and dangerous for the Prince, and the law hath been since repealed." The judges appear to have acquiesced in this doctrine. [NOTE C.]

P. 1002.

The Duke of Norfolk, in defending himself against this part of the charge, denied, that he had ever entertained a design of forwarding any supposed claim of the Scottish Queen to the crown of England; or that he had been induced to solicit a marriage with her, with a view to any such claim. Formerly, indeed, she had pretended a title to the crown; but since that time, she had been in amity and peace with Her Majesty; and it would be unreasonable and unfit at so late a period, on that account, to denominate her an enemy. He admitted, that he had advised the Queen to place her son in the hands of her friends, and to keep her castles out of the hands of her enemies: but protested, that he had never done any act, or conceived a thought, in support of any adverse claim by the Scottish Queen, or to the prejudice of the title and sovereignty of the Queen of England.

On the other side, the counsel for the crown pressed the case strongly against the Duke. "For what reason," said the attorney general, "did he aspire to this marriage, and even re-

solve to achieve it by force. It was not for her person; for he knew her not. It could not be from any good report of her virtues; for he had formed a bad opinion of her. It was not for her title to the kingdom of Scotland; he set no value upon that, nor was it in her power. It is plain, therefore, that he sought her, in respect of that unjust claim and title that she pretended to the crown of England. And this design he could not entertain, without evident purpose to depose the Queen's Majesty, and effect her destruction; which is plain treason by the statute of Edw. 3.; for no more can England bear two Queens, than the world can bear two suns. How could he have maintained his purpose, but with force? How could he use force, without depriving Her Majesty of the regal estate? How could he accomplish this, without compassing her death and destruction? For the jealousy of an usurper cannot suffer the just prince to live."

The counsel for the Crown proceeded to the proof of the other overt-acts, charged in the indictment; and gave in evidence several written confessions and examinations. But as none of these are stated at length in the report of the trial, we have not the means of forming a correct opinion, as to the guilt of the

accused. It appears, that the Duke objected to the competency of the Bishop of Ross, Barker and others, as men without conscience or credit, who had confessed themselves guilty of

P. 1026. treason. As for the Bishop of Ross and Rodolphi, said he, they were *strangers*, and on that account not *legales testes*, and not competent; and he referred to Bracton, as laying it down, that witnesses must be freemen and not traitors, neither outlawed, nor attainted. "None of the witnesses," answered Catlin, the Lord Chief Justice of the court of King's Bench, "are outlawed, attainted, or indicted. Bracton, indeed, is an old writer of our law; and according to Bracton, a stranger or a bondman may be a witness." All the judges affirmed the same to be law.

P. 1027. As the counsel were proceeding to prove that overt-act, which charged the Duke with traitorously aiding and assisting certain persons in Scotland, described to be public enemies of the Queen, the Duke of Norfolk inquired of the judges, whether those persons could properly be designated the enemies of the Queen of England, while their own legitimate sovereign continued in peace and amity

P. 1030. with the English government. "In some cases it may be so," answered the Lord Chief



Justice Catlin ; “ as in France, if the dukedom of Brittany should rebel against the French king, and should, during the amity between the French and the Queen of England, invade England, those Britons would be the Queen’s enemies, although their sovereign, the French king, remain in amity with her.”

The evidence being closed, the peers withdrew ; and, after a short deliberation, unanimously declared the accused to be guilty of high treason. The execution took place between three and four months after the trial. [NOTE D.] P. 1031.

A few remarks may be made at the close of this trial ; first, upon the principles of law to be extracted from the case ; and, afterwards, upon the nature of the evidence produced in support of the prosecution. One species of treason, of which the Duke was adjudged to be guilty, was, “ the adhering to the Queen’s enemies, and giving them aid and assistance ;” and this was effected by sending them supplies of money, which money, however, was afterwards intercepted, and seized, before its arrival. The Duke of Norfolk’s case is, therefore, an authority upon this point, that the sending money to rebels or enemies, although the money be afterwards intercepted, is high treason, Remarks.

within the meaning of the above-mentioned clause of the statute of treason.\* And this principle has been followed in later cases, especially in Gregg's case†, and Dr. Hensey's case‡; in which all the judges held, that letters of advice and intelligence, addressed to the King's enemies, to enable them to annoy this government or defend themselves, written and sent in order to be delivered to the enemy, though intercepted, are overt-acts of the same species of treason. Another principle, established by this case, and adopted by the best authorities§, is, that if the subjects of a foreign prince, who is in amity with this country, make an actual invasion of the kingdom without commission from their sovereign, they come under the description of *the King's enemies*; and any subject of this kingdom, adhering to them, is guilty of high treason.

Hume has remarked, that the trial of the Duke of Norfolk was quite regular, even according to the strict rules observed at present,

\* See Dyer, 298. b. note (a). Dyer (the Ld. C. J. of the Court of C. P.) was one of the judges attending at this trial.

† Foster, Cro. L. 217. 1 Burr. 646.

‡ Dr. Hensey's Case, 1 Burr. 647. Foster, Cr. L. 218.

§ 1 Hale, P. C. 163. 3 Inst. 11. Foster, Cr. L. 219.

except that the witnesses gave not their evidence in court, and were not confronted with the prisoner ; a laudable practice, he adds, which was not at that time observed in trials for high treason.\* In another passage, he writes, "The demand of having the witnesses confronted with the prisoner, however equitable, was not then supported by law in trials for high treason."† The counsel for the Crown, on this impeachment, maintained the same doctrine, that it was not necessary to bring forward the witnesses, in open court, before the accused, face to face. They asserted, that this practice of confronting the witnesses with the accused had proved too hard and dangerous for the prince, and that the law had consequently been repealed. In speaking of a repeal, they probably alluded to the statute 1 & 2 Phil. & Mary, c. 10. s. 7., which enacted, that all trials for any treason should be according to the due order and course of the common law ; and seem to have supposed, that this clause had repealed the provision in the 5 & 6 of Edw. 6. c. 11. s. 12., which required, that the accusers should be

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\* Hume, Hist. of Elizabeth, c. 40. p. 199.

† Ch. 42. p. 297.



brought *in person before the party accused*, at the time of the arraignment. The judges appear also to have been of the same opinion, as the doctrine, advanced by the counsel, passed without correction, and the whole of the evidence was composed of letters, written depositions, and confessions. This admission of the statements of persons absent, instead of the testimony of witnesses in open court and in the presence of the accused, was one glaring irregularity in the proceedings of this trial. It is certain, that the statute of Phil. & Mary was not intended to repeal the statute of Edw. VI.; although that construction of the act was soon found convenient; and the bad practice of receiving hearsay evidence continued to the end of the reign of Charles I. Even on the principles of the common law, without reference to the statute of Edw. VI., such evidence could not have been regularly admitted. Lambard, a writer in the time of Elizabeth, speaking of witnesses, who had made written depositions, being obliged to give their evidence at the trial *vivâ voce*, mentions it as a thing in the ordinary course of business.\* And in trials

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\* Eirenarcha, 2 B. C. 11. ad fin.

for felony, (in which the rules of evidence were the same, as in cases of treason,) depositions were not admissible, by the common law, even after the death of the deponent; nor are they admissible at the present day, except by operation of a statute, which was passed in the second and third year of Philip and Mary.\* [NOTE E.]

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\* See 3 Term Rep. 710. 722.

## NOTES.

## NOTE A. p. 23.

IT was a common practice with the judges, in early times, to meet together previous to the trial of a prisoner, and give their opinions on the indictment and on points of law; a practice, absolutely inconsistent with the fair administration of justice, and inconsistent with their judicial oaths. See 3 Inst. 29., and note in p. 25. of the new edition of Fortescue.

## NOTE B. p. 27.

In Ellis's Original Letters, vol. ii. p. 260., the reader will find a curious letter, containing a warrant of Queen Elizabeth for the application of the rack to Bannister, the Duke's servant. The horrible use of torture was frequently resorted to, for the purpose of extorting confessions, though uniformly declared by our best writers to be illegal. In the reign of Mary, it was applied to Protestants; in the reign of Elizabeth, to Catholics; and an instance is recorded of its having been used even so late as the reign of William the Third. See vol. i. of Brodie's Hist. p. 238., and a very valuable note in the new edition of Fortescue, p. 73.



## NOTE C. p. 28.

The practice of using the written examinations of absent witnesses, instead of their *vivâ voce* evidence in the presence of the prisoner, is alluded to in the play of Henry the Eighth, in the passage which gives the account of the trial of the Duke of Buckingham, who was convicted and executed for saying, "If the King should arrest him of high treason, he would stab the King with his dagger."\*

" The great Duke  
Came to the bar, where to his accusations  
He pleaded still not guilty, and alleged  
Many sharp reasons to defeat the law.  
The King's attorney, on the contrary,  
Urged on the examinations, proofs, confessions,  
Of divers witnesses, which the Duke desired  
To have brought, *vivâ voce*, to his face."

## NOTE D. p. 31.

" Incredibile est, quantâ charitate multitudo illum complexa sit, quam benignitate et comitate singulari, nec tanto principi indignâ, conciliaverat. Prudentiores varie affecti fuerunt; alii periculi magnitudine, (quod ab eo superstite et ejus factione imminere videbatur), perterriti, alii misericordiâ commoti in virum summâ nobilitate, summâ naturæ bonitate, conspicuâ membrorum compositione, et vultu virili; qui, nisi ab incepto vitæ cursu subdolæ æmulorum artes et spes lubricæ, specie boni publici, proposita deflexissent, patriæ firmamento pariter et ornamento fuisset." — Camd. Hist. Eliz. 246.

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\* See Godbolt, Rep. 264.

## NOTE E. p. 35.

The report of the trial of the Duke of Norfolk is the earliest, which gives any particular account of the course of proceeding in the Court of the Lord High Steward. It appears, that the court was opened by reading the commission, under the great seal, which appointed the Earl of Shrewsbury to be Lord High Steward *pro hac vice*. The Serjeant at Arms, to whom a precept had been directed commanding him to summon the Peers therein named, returned the precept and the names of the Peers summoned. These were read; and the Peers were called in order, the most ancient in dignity being first called. The Lord Chief Justice of the Court of King's Bench returned the writ of *certiorari*, by which the indictment was brought up from that court; and the Lieutenant of the Tower returned the writ of habeas corpus, and led his prisoner to the bar. The indictment was then read over, and the prisoner called upon by the Lord High Steward to plead to it. At the end of the trial, the Lord High Steward desired the Peers to retire together, to consider their verdict. They accordingly withdrew; and the prisoner was taken back. While they withdrew, the Lord High Steward remained in his seat. On the return of the Peers into court, he demanded of each Peer, beginning with the youngest baron, whether the prisoner was guilty or not guilty of the treasons laid to his charge. After they had declared their opinions, the Lieutenant of the Tower was commanded to bring the prisoner again to the bar. The counsel for the crown prayed for judgment according to the verdict: and judgment was pronounced by the Lord High Steward, as in cases of high treason.

The Lord High Steward appears not to have taken any part during the trial, either with reference to questions of law, or to the facts of the case. When any objection was taken by the prisoner, the answer was given by the Lord Chief Justice of the King's Bench ; but whether on a reference made to him for his opinion by the Lord High Steward, or by the Peers, is not stated in the report.



The first part of the book is devoted to a general survey of the subject. It begins with a definition of the term, and then proceeds to a discussion of its history and development. The author then discusses the various methods of study, and finally, he discusses the various applications of the subject.

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THE TRIAL  
OF  
THE EARL OF ESSEX  
AND  
THE EARL OF SOUTHAMPTON,  
BEFORE THE LORDS AT WESTMINSTER,  
FOR  
HIGH TREASON.

43 Eliz. Feb. 19. 1600.—1 *Howell*, 1334.

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THE fate of the celebrated Earl of Essex, his rapid elevation, and no less rapid fall, are familiar to the reader of English history. Noble, eloquent, chivalrous, with an engaging person and captivating manners, he was well formed to grace the splendid court of Elizabeth. But the defects of his character, which were not less remarkable—a fiery and ungovernable spirit, pride that would never yield, a temper that would neither serve nor wait, and an unguarded openness both in his friendships and enmities—marred his fortune, and involved him and his associates in final ruin. The first

reverse which he suffered, was on his return from Ireland, when he incurred the displeasure of the Queen by his mismanagement of the affairs of that kingdom. For this misconduct, he was sentenced by the Privy Council to lose his high offices, and to return to his own house a prisoner at the will of the Queen. He submitted to this sentence with great appearance of humility ; but some fresh marks of royal displeasure, which were intended as trials of the sincerity of his submission, and, unfortunately, were accompanied by harsh and contemptuous expressions, exhausted all his patience, and drove him into despair. In a sudden burst of rage he resolved to take revenge on his enemies at court. He rallied around him his personal friends and dependents, hastily deliberated on the best means of attack, and at once broke out into open rebellion. One of his most intimate friends, the Earl of Southampton, whom he had advanced to an important military command in Ireland against the wishes of the Queen, and even in defiance of her positive injunctions, determined to share his fortune, and with his leader incurred the penalty of high treason.

The Earl of Essex and Earl of Southampton were tried together in the court of the Lord



High Steward. The Lord Treasurer Buckhurst was appointed by commission to preside in that high office. The course of proceeding, before the trial began, was the same as that described in the last trial. Twenty-five Peers were called to answer to their summons; and all appeared. The judges present on this occasion were the Lord Chief Justice Popham, the Lord Chief Justice Anderson, the Lord Chief Baron Periam, and the judges Gawdie, Fenner, Walmesley, Warburton, Kingsmill, and Clarke. A body of the Queen's guard attended, and at their head the celebrated Sir Walter Raleigh, who in a few years was himself doomed to stand in the same peril of his life.

The indictment, which had been presented by the grand jury of the county of Middlesex, charged the noble prisoners with high treason, in conspiring the death of the Queen, and in levying war. The several particulars of the indictment are not stated in the report; but it appears from the opening speech of the Attorney General, Sir Edward Coke, that the principal overt acts, charged against them, were, the exciting a rebellion in the city, and the consulting and conspiring to surprise and take by force the Queen and her court, and to seize the Tower of London. [NOTE A.] When

P. 1337.

the Peers had been called over, preparatory to the trial, the Earl of Essex enquired, whether he might be allowed to challenge any of them. The answer of the judges was, that such a challenge could not by law be permitted; and Lord Dacre's case, which occurred in the reign of Henry VIII., was cited as an authority.\* Serjeant Yelverton opened the case, stating the principal facts; he declared it was marvellous, that the accused should not blush to stand upon their trials without confession, when their treasons were so well known to the Peers, so notorious, so palpable; and concluded with praying for the Queen's safety and preservation from her enemies. "And may God," exclaimed Essex, "confound their souls, that ever wished otherwise to her sacred person." Yelverton was followed by the Attorney General, Sir Edward Coke, who spoke with all that quaint precision and force, for which he was so remarkable. In one part of his speech, he panegyrised the Queen for her singular clemency in not allowing the witnesses to be racked and tortured for their confessions; and this he represented to be "over-much cruelty to herself."

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\* Vide 3 Inst. 27. Moore's Rep. 621.

The evidence consisted of two parts ; the one, relating to the plot for surprising the court and the Queen's person ; the other, concerning the rebellion in the city. The written examination of Witherington was first produced ; in which the deponent stated, that he had been sent for by the Lord Essex ; and that, on repairing to Essex House, he found it guarded by a large party in arms ; that Lord Essex complained of having been beset at court by many private enemies ; that some of the lords of the privy council, who had been despatched to Essex House, were shut up in one of the rooms, and their personal safety threatened ; that they commanded the Earl of Essex on his allegiance to disperse his forces, to which he made no answer, and the party continued as before in arms. P. 1339.

A written declaration by the Lord Keeper, the Lord Chief Justice Popham, and a third Lord of the Council was also read ; giving an account of the riotous proceedings at Essex House. It stated, that Lord Essex had declared his life was in danger, and that he and his friends were in arms to defend themselves. The Chief Justice, by his oath in open court, confirmed the statement in this declaration. P. 1340.



P. 1544. The next evidence was the written confession of Sir Ferdinando Gorges. He stated, that Lord Essex had desired his assistance against his enemies at court. The Earl expressed great confidence in the number and zeal of his friends, and expected support in the city and from a party in Wales. "I have a hundred and twenty earls, barons, and gentlemen," said the Earl of Essex, "who participate in my discontented humour, and will join with me." Two meetings took place at Drury House, where Sir Charles Davers lodged, at which Lord Southampton and others of the party attended, for the purpose of carrying their projects into execution. The subject of debate was, whether it would be safest, in the first instance, to surprise the court, or seize the Tower, or raise an insurrection in the city. The greater number advised the surprising of the court, and a plan was immediately concerted for its execution. It was arranged, that some should take possession of the Hall, and some of the Gates, while others were to enter the Guard Chamber and the Presence Chamber; in this manner, it was supposed, Lord Essex might easily pass through his guards into the Privy Chamber, and have

access to the presence of the Queen. Sir Ferdinando dissuaded a measure, so rash and fraught with danger; on which Lord Southampton observed, "Is it not three months since this plot began? and shall we resolve on nothing?" The party afterwards altered their plan, and resolved on raising an insurrection in the city, where they expected great support. Lord Essex was not present at the meetings; but they were held by his appointment, and the resolutions of the party were reported to him. Sir Ferdinando Gorges was brought into court, at the request of Lord Essex, and vouched the truth of his confession.

Then followed the written confession of Sir Charles Davers, who entered more fully into the particulars of the conspiracy. He stated, that there had been several consultations; and the points debated were, first, the taking of the Tower, next the surprising of the court. Sir Christopher Blunt was to guard the outward gates of the court; Sir John Davis, the Hall and Water-gate; Sir Charles Davers to watch the Presence Chamber and Guard Chamber, and seize upon the halberts and the pensioners' battle-arms. It was determined, that the Earl of Essex should immediately call together parliament, for the reform of disorders and

P. 1545.

private grievances. Sir Charles Davers concluded his confession, by declaring, that he had entered into the scheme, not from any private discontent, but solely from the love he bore to the

P. 1346. Earl of Southampton. The written confession of Sir John Davis was to the same effect as the two former.

P. 1347. The written examinations of the Earl of Rutland, Lord Cromwell, Lord Sandes, and Lord Monteagle, described what passed, on Essex's sallying forth with his attendants into the city. The several examinations and confessions were admitted conformably with the practice of the times, as the most incontestible proof; although they were, upon all just principles of evidence, utterly inadmissible.

P. 1356. Lord Essex, in his defence, protested, that he had never entertained any desire to use the least restraint on the royal person, or do the Queen the least injury; that the sole object, which he had in view, was to enter the court with a few select friends, who, like himself, had just cause of discontent, and at the Queen's feet to entreat her protection against the malice of enemies, who by means of false insinuations had deprived him of her royal favour. Lord Southampton made a similar defence; adding, that what he had done had been



without any intention to offend against the laws, and purely from a wish to serve his friend and kinsman the Earl of Essex. The Peers retired to consider their verdict, while the prisoners were taken from the bar ; and, in consulting together, they required the attendance of the two Chief Justices and the Lord Chief Baron, to assist them with their opinions on points of law. In about half an hour, they returned to their places, and declared the Earl of Essex and Earl of Southampton to be guilty of high treason. Lord Essex was shortly afterwards beheaded, in the Tower ; Lord Southampton's life was spared. [NOTE B.]

A resolution of the judges, in this case, is Remarks. reported by Chief Justice Kelyng in the following terms : “ It was resolved by all the judges, that the gathering of men together to compel the Queen to yield to certain demands, or to remove evil counsellors, was an overt act to prove the compassing of the Queen's death.”\* The report of their decision is fuller in Moore's Reports.† “ The judges resolved, that the going into the city by the Earl of Essex with a troop of captains

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\* Kelyng, Rep. 21.76.

† P. 621.

and others, and there praying aid of the citizens to assist him in defence of his life, and to go with him to the Queen's court into her presence, 'with strong hand,' in order to enable him to remove some of his enemies, who were in attendance on the Queen,—was high treason; because it tended to the exercise of force and restraint upon the Queen in her palace; and the fact, so done in London, was actual rebellion, although he might not intend any personal injury to the Queen."

The going armed into the city, in the manner here described, considered as an actual rebellion or *levying of war*, was in itself a substantive act of high treason: considered as demonstrative of the *compassing of the Queen's death*, it was only an overt-act of high treason, "an overt act (to use the words in Chief Justice Kelyng's report) to prove the compassing of the Queen's death."\* It is essentially necessary to bear constantly in mind, the distinction between the proposition, "that a certain act is in itself a substantive species of high treason," and the other proposition, "that it is an *overt act to prove* such treason."

It was also resolved, that the adhering by

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\* See 1 Hale, P. C. 120. 138. 1 East, P. C. 59.

the Earl of Southampton to the Earl of Essex, who was in open rebellion in London, was treason in him, although he knew of no other design in Lord Essex but a private quarrel against some of the Queen's servants. It was further resolved, that all those who went with Lord Essex out of Essex House into London, *in aid of him*, (whether they knew of his intentions, or not, and though they departed on the reading of the proclamation,) were guilty of high treason. The words, "*in aid of him*," are not in Moore's Report, but they appear to be indispensably necessary. Without them, or without some words of the same import, the resolution cannot be good law.

Two of the brightest names in English history—Raleigh and Bacon—occur in the proceedings of this trial. Sir Walter Raleigh appeared as one of the witnesses against Essex, to repeat, what should not have been received in evidence, a mere hearsay narrative; and as he was his rival at court, and of an opposite party in the state, his coming forward on this occasion, when Essex stood in peril of his life, was imputed, not without reason, to the unworthy feeling of jealousy. [NOTE C.] Bacon took a more active part, as one of the speakers on the part of the prosecution.



P. 1350. He spoke with severity against his patron and his benefactor: he treated the defence, which Essex had made for himself, with contempt, comparing him to Pisistratus, and his rebellion to that of the Duke of Guise. "You see how weakly," said Bacon, addressing himself to the Lord High Steward, "he has shadowed his purpose, how slenderly he has answered the objections against him. And now, my Lord," he continued, turning to Lord Essex, "all you have said, or can say, in answer to these matters, are but shadows; and therefore, methinks, it were your best course to confess, and not to justify." Bacon was reproached with having interfered officiously, when he was not obliged by his duty to take any part in the proceedings. Against this charge he defended himself, in an apology, written soon after the trial; in which he declares, that he had not obtruded himself, or solicited the Queen to employ him in the business, but had only performed a public duty in common with the rest of the counsel: that he begged the Queen to excuse him from taking a part in the prosecution; at the same time assuring her, that if she required him to act, no private obligation should interfere with the paramount duty, which he owed to her and to her service: and that if he had handled his



part not tenderly, this was from the superior duty which he owed to the Queen in a public proceeding, and partly with a view to support his own credit with the Queen, that he might afterwards be better able to do good offices to Essex. [NOTE D.] But giving full credit to those professions of regard, and making all allowances for his zeal in the Queen's service, it is impossible to excuse the eagerness and unfeeling tone, with which he exerted himself against so generous a patron and friend as the Earl of Essex.

Hume, citing Lord Bacon as his authority, has said, that the trial at common law, which was granted to the Earl of Essex and his fellow-conspirators, was a favour shown them by the crown; and that the case would have borne and required the severity of martial law. But there is no ground whatever for such a statement. On the contrary, it appears from the most approved authorities, that if he had been executed by martial law for this rebellion, which broke out in time of peace, he had been murdered. Sir Edward Coke declares, "If a lieutenant, or other that hath commission of marshall authority, in time of peace, hang or otherwise execute any man by colour

of marshall law, this is murder.”\* And Sir Matthew Hale writes, “If in time of peace a commission issue to exercise martial law, and such commissioners execute any of the king’s subjects not being listed under the military power, this is without all question a great misprision, and an erroneous proceeding, and so adjudged in parliament in the case of the Earl of Lancaster. And, in that case, the exercise of martial law in time of peace is murder.”† [NOTE E.]

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\* 3 Inst. p. 52.

† 1 Pl. Cr. 500.

## NOTES.

## NOTE A. p. 43.

Lord Bacon has given a very full and clear history of this trial. One or two particulars, here mentioned, are taken from his account. See "The declaration of the Treasons of Lord Essex," in the 4th vol. of the 4to. ed. of Lord Bacon's Works.

## NOTE B. p. 49

The character of Essex is well drawn by Camden in his history of Elizabeth. "Vir erat virtutibus, quæ nobilissimo dignæ sunt, instructus singulis. Non ad aulam factus videbatur, qui ad scelera segnis, ad offensionem accipiendam mollis, ad deponendam facilis, et sui minime obtegens; sed φιλοφανερός et μισοφανερός, id est, amorem et odium in fronte semper gessit, nec celare novit. Ut verbo expediam, nemo gloriam ex virtute magis concupivit, et cætera omnia minus concupivit."

## NOTE C. p. 51.

A letter from Raleigh, to Sir Robert Cecil, urging him not to spare the life of Essex, fixes a deeper stain on the brilliant character of that great man. It is to be found in Murdin.

## NOTE D. p. 35.

See "The apology of Sir Francis Bacon, against imputations concerning Lord Essex," in the 4th vol. of his works, 4to. edit. Camden, in his History of Elizabeth, mentions Bacon among the Queen's counsel on the trial. "*Franciscus Baconus, à regio in rebus forensibus consilio, politè et oratoriè colorem rebellionis, ex inimicorum insidiis quæsitus, abstergere conatus.*"

## NOTE E. p. 54.

The proceedings against the Earl of Lancaster, referred to by Sir Matthew Hale, are reported in 1 Howell, 39.



THE TRIAL  
OF  
SIR WALTER RALEIGH,  
AT WINCHESTER,  
FOR  
HIGH TREASON.

1 James I. Nov. 17. 1603.—2 *Howell*, 1.

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AMIDST the great tranquillity, both foreign and domestic, with which the nation was blest, nothing could be more surprising than the discovery of a conspiracy to subvert the government, and to fix on the throne of England, Arabella Stuart, a near relation of the King, and descended equally from Henry VII. Every thing remains still mysterious in this conspiracy ; and history can give us no clue to unravel it. Watson and Clarke, two Catholic priests, were accused of the plot ; Lord Grey, a puritan ; Lord Cobham, a thoughtless man, of no fixed principle ; and Sir Walter Raleigh, suspected to be of that philosophical sect, who

were then extremely rare in England, and who have since received the appellation of *freethinkers*; together with these, Broke, Sir Griffin Markham, Copeley, and Sir Edward Parham. What cement could unite men of such discordant principles in so dangerous a combination; what end they proposed, or what means proportioned to an undertaking of this nature, has never yet been explained, and cannot easily be imagined.\*

- P. 1. Sir Walter Raleigh was tried for high treason, in the first year after the accession of James to the throne of England. The trial was at Winchester, under a special commission directed to the Earl of Suffolk, Cecil Earl of Salisbury, the Lord Chief Justice of England Popham, the Lord Chief Justice of the Common Pleas Anderson, Mr. Justice Gawdie, and Mr. Justice Warburton. The indictment, on which he was tried, had been found by a grand jury of the county of Middlesex; and the jury, who tried him, was composed of jurors of the latter county.† The principal overt acts, charged in the indictment, were,
- P. 2. the conspiring to deprive the King of his government; to excite sedition within the realm;

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\* Hume's Hist. of James I., c. xlv.

† See 3 Inst. 27.

and to procure foreign enemies to invade the kingdom. The indictment also charged, that Lord Cobham and Raleigh had conspired to advance the Lady Arabella Stuart to the Crown of England; that it was arranged between them, that Lord Cobham should treat with Aremberg, the ambassador of the Archduke of Austria, for supplies of money, to enable them to carry their plans into execution; and that Cobham should also apply to the Archduke Albert, and the King of Spain, to support the Lady Arabella's pretended title; that Raleigh published a book against the title of James to the Crown of England; and that Cobham, by the instigation of Raleigh, applied to Count Aremberg for a large sum of money, for the purpose before mentioned, for which Raleigh was to receive a part. The Attorney General, Sir Edward Coke, opened the case for the prosecution, in a speech abounding with flattery to the King and with invective against Raleigh. While the Attorney General was using terms of abuse, which not the worst degree of guilt, in the lowest criminal, could justify—"Your words," interposed the prisoner, "cannot condemn me. My innocence is my defence. Prove one of those things, wherewith you have

P. 5.

P. 7

charged me, and I will confess the whole of the indictment, and that I am the horriblest traitor that ever lived, and worthy to be crucified by a thousand thousand torments." The Attorney General continued in the same strain. "Let me answer for myself," again interposed the prisoner. "Thou shalt not," said the Attorney General. "It concerneth my life," replied the prisoner. At the conclusion of this speech, the Attorney General insulted the prisoner in the most offensive terms. "It becometh not a man of quality and virtue," observed Raleigh, "to call me so. But I take comfort in it, it is all you can do." "Oh, have I angered you?" retorted the Attorney General. "I am in no case to be angry," answered the prisoner. The Lord Chief Justice Popham then addressed Sir Walter Raleigh, "Mr. Attorney speaketh out of the zeal of his duty, for the service of the King; and you for your life. Be valiant on both sides."

P. 16.

A paper, purporting to be the examination or confession of Lord Cobham, was first read in evidence. It stated as a fact, that Cobham had confessed his having a passport to go to Spain, and his intending to go to the Archduke, for the purpose of conferring with him; that knowing the Archduke had not money enough



to pay his own army, he intended to apply to the King of Spain for money, and that he should do nothing, until he had spoken with Raleigh as to its distribution among the discontented in England. The paper proceeded to state, that Cobham at first breathed out oaths and exclamations against Raleigh, calling him "villain" and "traitor," and saying, "he (Cobham) had never entered into such courses but by Raleigh's instigation, and that Raleigh would never let him alone." It further stated, that Cobham spoke besides of plots and invasions; of the particulars of which he could give no account, though Raleigh and he had conferred on them. He also said, he was afraid, that, when he (Cobham) should return by Jersey, Raleigh would have delivered him and the money to the King. In another part of his examination, he said, he had a book, written against the title of the King, which he received from Raleigh, and he had given it to his brother Brook; and that Raleigh told him it was foolishly written.

A second paper was read, purporting, like the former, to be an examination of Lord Cobham. It appears from this, that Lord Cobham was required to sign the former examination, which he at first refused to do;

P. 12.

[NOTE A.] and at the same time, a letter in the hand-writing of Raleigh was shown him ; that Lord Cobham, on reading the letter, paused, and broke forth into abuse of Raleigh, calling him "villain, "traitor," adding, that he would tell all the truth ; then he said, his intention was to go into Flanders and Spain, for the purpose of obtaining the money, and that Raleigh had appointed to meet him in Jersey, on his return home, to be advised by him as to the distribution of the money.

P. 17. The confessions of Brook and Lawrency, which were then given in evidence, related solely to Cobham, and did not in the remotest degree touch Raleigh ; nor did they confirm any part of Cobham's examination, that affected Raleigh. The examination of Copley contained mere hearsay of the worst description, a report at second and even at third hand. Copley is there represented to say, that some person of the name of Watson had told him, that a certain other person (not named) told him (Watson), that Aremberg had offered him money, to engage him in the business ; and that Brook had told him (Watson), that the stirr in Scotland had come from Raleigh's head. With a view to give some weight to this vague report from Brook, a single passage from

Raleigh's examination was read, in which Raleigh is said to have declared, that the way to invade England was by beginning with a stir in Scotland. Raleigh admitted, at his trial, that this had always been his opinion, and that he had often mentioned it in the way of discourse. The same observation may be made on Watson's examination, as on that of Brook; that it contained mere hearsay, at second and third hand.

Another part of Raleigh's examination was also read. Raleigh there admitted, that Cobham offered him 8000 crowns, which he was to have for the furtherance of the peace between England and Spain, and that he was to receive it in three days. He added, that he gave this answer to Cobham, "When I see the money, I will tell you more;" for he looked upon the proposal as one of Cobham's idle conceits, and therefore gave it no regard.

The only witness, examined upon oath, was Dyer. He was allowed to give this evidence; that a stranger, meeting him at Lisbon, asked him, whether the King was crowned; to which he answered, that the King was not crowned, but he hoped he would be shortly; the stranger then replied, "He never shall be crowned, for Don Raleigh and Don Cobham

P. 25.

will cut his throat, ere that day come." This absurd exclamation, by some unknown stranger in a foreign country, was received without hesitation, as legitimate proof against the prisoner.

P. 27. A letter written by Lord Cobham was produced by the Attorney General, and read. Cobham mentions the circumstance of Raleigh having written to him, calling upon him to repair the great wrong, which he had done by accusing him; and that in his answer to Raleigh's letter he had retracted the charge. He says also, that Raleigh engaged, on receiving a pension, to give information to Aremberg of any movements or design against Spain, the Low Countries, or the Indies; and that he had no dealing with Aremberg, except by the instigation of Raleigh.

P. 28. Raleigh acknowledged that he had written a letter to Cobham, in which he had said, "You know you have undone me; now write three lines to justify me." To this letter Cobham wrote an answer, which Raleigh produced, in the following terms. "Seeing myself so near my end—for the discharge of my own conscience, and for freeing myself from your blood, which else will cry for vengeance against me—I protest upon my salvation, I never practised with



Spain by your procurement. God so comfort me in my affliction, as you are a true subject, from any thing that I know. I will say, *purus sum a sanguine hujus*. God have mercy on my soul, as I know of no treason by you." This letter appears to have produced, as well it might, a very considerable sensation. The Attorney General alleged, that it had been artfully obtained from Cobham; and that the first letter was the simple truth. The Earl of Devonshire came forward, and stated, that the letter produced by the Attorney General was voluntary, and had not been drawn from Cobham by any promise of pardon. — No other evidence was produced, either on the part of the prosecution, or on behalf of the prisoner. P. 29.

It appears clearly from the foregoing statement, that the proof of the charge of high treason rested entirely on the single confession of Lord Cobham. Raleigh insisted, that there ought to be at least two witnesses; that two witnesses were required by common law, by the statute-law, and by the law of God; that the witnesses ought to be brought into court, and confronted with the accused. That here, on the contrary, there had been the single confession of a P. 15.

single person ; a confession not signed, and its truth not avouched. "The proof of the common law," said Raleigh, "is by witnesses and jury ; let Lord Cobham be sent for ; call my accuser before my face, and I have done ; charge him on his soul, and on his allegiance to the King ; and, if he affirm it, let me be taken to be guilty." [NOTE B.]

The Lord Chief Justice Popham said in answer, that the statutes of 25 Ed. 3. & 5 Ed. 6., respecting proof by two lawful accusers, had been repealed. Raleigh still pressed the objection, with great force of argument ; on which the Earl of Salisbury (one of the commissioners on the trial), referred to the judges for their opinion, whether Lord Cobham ought to be brought into court as a witness. The Chief Justice said, "It cannot be granted ; for, then, a number of treasons would flourish ; the accuser may be drawn by practice, while  
P. 18. he appears in person." Gawdy J. said, the statute, of which you speak, concerning two witnesses in case of treason, has been found inconvenient, and has therefore been taken away." "But," observed Raleigh, "the common trial of England is by jury and witnesses." "No," answered the Lord Chief Justice, "by examination ; if three conspire

a treason, and they all confess it, though there is not a witness, yet they are condemned." And another judge, Warburton J. added, "Many horse stealers may escape, if they may not be condemned without witnesses." "Where the accuser," said Raleigh, "is not to be had conveniently, I agree with you; but here my accuser may; he is alive, and in the house. Will you condemn an innocent man, without examination or knowledge of the truth? Remember it is absolutely the commandment of God:—'If a false witness rise up, you shall cause him to be brought before the judges; if he be found false, he shall have the punishment, which the accuser should have had.'" The Lord Chief Justice concluded the argument by saying, "There must not such a gap be opened for the destruction of the King, as would be, if we should grant this. You plead hard for yourself; but the laws plead as hard for the King."

Raleigh, in his defence, solemnly denied Defence. the truth of every charge and imputation, which Lord Cobham had urged against him; he denied, that he ever had any communication with Aremberg, either through Cobham or in any other manner; he denied having any conference with Cobham on the subject of

Arabella Stuart, or that her name had ever been mentioned between them. He was falsely accused, he said, by Cobham, from motives of revenge and malice, because he had mentioned to the privy council, when he was examined before them, his suspicions of that nobleman's conference with Aremberg and Lawrency. With respect to the book, which he was charged with having given to Lord Cobham, he said, it was a manuscript book, which he had originally brought from the library of the old treasurer Lord Burleigh, and laid among some of his own papers on his table, whence Cobham had taken it; but as to its being against the King's title, he had never read it, or shown it, and was a stranger to its contents. "Consider," said he, the ability of the King's counsel, and "my disability. They prove nothing against me: only they bring the accusation of my Lord Cobham, which he hath lamented and repented as heartily, as if it had been for a horrible murder; for he knows that all this sorrow, that should come to me, is by his means. Presumptions must proceed from precedent or subsequent facts. I, that have always condemned the Spanish faction, methinks it is a strange thing, that now I should affect



it. Remember what St. Austin says: ‘*Sic judicate, tanquam ab alio mox judicandi; unus judex, unum tribunal.*’ If you yourselves would be contented to be delivered up to be slaughtered, — to have your wives and children turned into the streets to beg their bread; if you would be contented to be so judged, — judge so of me.” Throughout the whole of his defence, this illustrious man displayed the prompt eloquence, the undaunted spirit, and noble deportment, which had so eminently distinguished him in his better days. On the other side, his accuser, Sir Edward Coke, exhibited a style and manner, in every respect the reverse, — intemperate, illiberal, low, rancorous, oppressive. It is painful to reflect, that the insulting terms, — monster, vile viper, execrable traitor, spider of hell, damnable atheist — were some of the appellations applied in a court of justice by the public prosecutor, to one of the most distinguished men in the kingdom; and still more painful to remember, that his prosecutor was Sir Edward Coke, to whom the laws and liberties of England are so deeply indebted.

The jury deliberated not a quarter of an hour; and returned with a verdict of guilty.

On being asked the usual question, whether he had anything to urge, why judgment should not pass against him, he answered, "My lords, the jury have found me guilty: they must do, as they are directed. I can say nothing, why judgment should not proceed. You see, whereof Cobham hath accused me. You remember his protestations, that I was never guilty. I desire the King should know of the wrongs done to me, since I came hither."

Judgment of death was then pronounced.

P. 31.

Sir Walter Raleigh, at the conclusion, besought the Lords Commissioners, to be suitors on his behalf to the King; that, from regard to the high offices of trust and estimation, which he held under the crown, the rigour of the judgment might be so qualified, that his death might be honourable, and not ignominious.

Remarks.

This trial furnishes another memorable instance of a conviction founded on evidence utterly inadmissible. With the exception of the paper, produced as the confession of Lord Cobham, there was not a single document or statement of any kind, that bore even the semblance of proof. On this paper, therefore, exclusively must the conviction be understood to proceed. One of the counsel for the prosecution (Serjeant Phillips) fully admitted

this. "Lord Cobham," he said, "confessed Sir Walter to be guilty of all these treasons. The question is whether he be guilty as joining with him, or instigating of him? The course to prove this was by my Lord Cobham's accusation. If that be true, he is guilty: if not, he is clear. So whether Cobham say true, or Raleigh, that is the question."

Now, the first and most obvious objection to the admissibility of this writing (whether it be considered as a deposition or confession, whether taken under the sanction of an oath or without oath), is, that it was merely a hearsay representation, and as such inadmissible. To receive it, in either character, was not only contrary to the principles of the common law, but in express violation also of the statutes of the 1st of Ed. 6. and 5th & 6th of Ed. 6.; which had never been repealed, although long disregarded by the judges of those times. The written document was, in truth, neither deposition nor confession; it was not the genuine language of Lord Cobham in making his confession; but manifestly a representation by some third person as to the *effect* and *result* of Lord Cobham's statement. Who wrote the contents of the paper — on whose dictation — what was the mode of taking the examination

—what the questions, and what the answers—upon all these important points, not the least information was given. It is certain, that the writing was not in the language of Lord Cobham ; nor was it proved to be a correct and just representation of what he stated before the privy council. The circumstance of that nobleman refusing to sign the paper, until he had been warned by the Lord Chief Justice, that, if he withheld his signature, he would be guilty of a contempt, is sufficient to excite strong suspicion of the falseness of the statement ; and what makes it still more unworthy of credit, is the fact, that Lord Cobham himself afterwards retracted the charge, and fully acquitted Raleigh of all participation in his guilt. Having, in the first instance, accused Raleigh from a strong feeling of resentment, he soon after solemnly retracted the accusation as false and unfounded. The terms of his written retractation are strongly expressive of remorse ; and it is difficult to imagine what, but a sense of guilt, could induce the writer to make a confession, which could not fail to prove fatal to himself. It should not be forgotten, that this unprincipled man, who appears to have been no less weak than wicked, after retracting his accusation of Raleigh, again re-



tracted his recantation ; and much stress was laid upon this, by the counsel for the crown, as a confirmation of the original story ; although, according to every just estimate of character, it might with more reason be considered the strongest additional ground of suspicion.

The tragical fate of Sir Walter Raleigh remains to be told. For thirteen years after his sentence he was shut up a prisoner in the Tower, by order of the King ; — “ And what other King,” said Prince Henry, “ would shut up such a bird in a cage ? ” It was after this long confinement, that he submitted to the King a scheme for an adventure, which he proposed to undertake with a party of private adventurers to the coast of Guiana, on an expedition for the discovery of gold-mines. This proposal was, after some hesitation, approved and accepted. The King granted him a commission, gave him the sole command of the expedition, and invested him with the absolute authority of martial law over his followers. In return for this the King was to receive one-fifth of all the gold and treasure, which the adventure produced. Unfortunately the scheme entirely failed. The Spaniards, having received early information of the intended expedition, opposed the English in their passage up the

river Oronooko, near the town of St. Thomas. The adventurers, irritated by this opposition, stormed the town, took it by assault, and reduced it to ashes. This rash measure was not attended with any favourable result, and served only to excite the sufferers to a more determined resistance. Sir W. Raleigh, having lost in the attack his eldest son and some of his companions, and finding the rest of his party dispirited, resolved at length to return to England. The adventurers returned without a sight of the promised mine, and, what was worse, without any treasure for the King. In the mean time, the Spanish Ambassador made strong remonstrances to the King against the expedition, as a piratical attack, and demanded justice on Raleigh for a violation of the treaty subsisting between the two nations. The Spanish faction prevailed; the King severely censured Raleigh, and a proclamation was issued for his apprehension. After an unsuccessful attempt to escape out of the kingdom, he was taken soon after his landing, and re-committed to the Tower. Proceedings were immediately commenced against him. It was resolved not to try him for his conduct in America, (the only course that could be adopted in common justice,) but to take away

his life on the old judgment of fifteen years' standing, under which he had suffered such a protracted imprisonment. A warrant under the privy seal was issued, directed to the judges of the Court of King's Bench, commanding them to proceed against him according to law\*; thereupon a writ of *habeas corpus* was awarded, and Sir Walter Raleigh was brought to the bar of the King's Bench. There he was asked, whether he had any thing to say, why execution should not be awarded against him; when he pleaded, that as the King had granted him a commission, and given him the power of life and death over his fellow subjects entrusted to his command, this must be considered, in reason and in law, a suspension, if not a reversal, of the judgment, and equivalent to a pardon. In support of this argument, he referred to a case, in 22 Ed. 3., reported in Fitzherbert, where a person, who had been attainted of felony, and afterwards held a command in war under the King, on being again impeached for the same felony, pleaded the special matter, and was discharged. The Chief Justice Montague replied, that the judges had well considered that case; and

P. 33.

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\* See Hutton's Rep. 21.

although, perhaps, in a case of felony, a pardon by implication might be sufficient, it was otherwise in treason, and nothing less than an express pardon would stay the execution. [NOTE C.] The Chief Justice then pronounced the sentence of the Court, that execution should be done according to the first judgment. Raleigh entreated, that he might not be so suddenly cut off. "I humbly beseech you," he said, "to grant me some time before my execution, that I may settle my affairs and my conscience. I beseech you not to think, I crave this leisure to gain one moment of life ; for now, being old, sickly, in disgrace, and certain to die, life is wearisome to me ; but I have much still to do for my reputation, for my conscience, and my loyalty. I call on God to be my judge, that I have never been disloyal to my King ; and this I will be bold to justify in that place, where I shall not fear the face of any King on earth. And so I beseech you all to pray for me."\* Raleigh's prayer for a short respite of the sentence was refused : the King, on the same

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\* See the conclusion of Oldy's life of Raleigh ; and the report of the trial.



day on which judgment was pronounced, signed a warrant for his execution ; and the execution took place on the following morning. [NOTE D.]

Such was the fate of Sir Walter Raleigh, who had contributed so signally to the glory of the English nation ; eminently accomplished in the arts both of war and peace, an historian, a poet, statesman, philosopher, and one of the most celebrated captains of the age. He had acquired, at the close of his life, the greatest popularity, and was become a favourite of the people. They sympathised with his adverse fortune, admired the heroic spirit with which he bore his lingering imprisonment, and fondly regarded him as the last of the great captains of Elizabeth's reign. One of his contemporaries, in drawing his character, justly and eloquently styles him, "that rare renowned knight, whose fame shall contend in longevity with this island itself, yea with that great world, which he historiseth so gallantly."\* On the subject of Sir Walter Raleigh's execution there can only be one opinion, — that it was in

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\* See Howell's Letter, cited in page 57 of the trial.

the highest degree unjust and cruel. The conviction itself was extremely hard, not to say, illegal; and so sensible of this was the government, that his life was in consequence reprieved. His conduct during his long imprisonment was unimpeachable. Even his enemies have never insinuated, that, from the time of his trial to the moment of his receiving the royal commission, which was an interval of fifteen years, he had ever done a single act to forfeit the clemency by which his life had been spared. During that long interval, his loyalty was unsuspected; he had not engaged in the politics of the day, nor connected himself with any party in the state; but devoted his days and nights to his favourite studies of history and philosophy. Such nobleness of character deserved a pardon; at least, such an imprisonment was enough to satisfy the demands of justice. If afterwards he had been guilty, as was alleged, of some misconduct, while acting under the royal commission, for this he was amenable to the laws of his country. It was due to him, and to the public not less, that the charge should be brought forward openly against him, and that the accused should be put upon his defence. But the

course adopted by the government, in taking away his life on a stale judgment of fifteen years' standing, was equally unjust and mean. For while they professed only to execute the sentence for the crime of high treason, their real object was unquestionably, in compliance with the demands of the Court of Spain, to take vengeance on him for some alleged misconduct in South America. "You might think it heavy," said the Lord Chief Justice Montague, in delivering the judgment of the Court, "if this were done in cold blood, to call you to execution. But it is not so. For *new offences* have stirred up his Majesty's justice, to remember to revive what the law hath formerly cast upon you." With those new offences, whatever they might be, he was never publicly charged; yet was he accused without a public prosecutor, and condemned without a trial. And at last he was executed for the presumed guilt of those undefined, untried offences, on the old judgment of high treason, for which he had suffered no less than fourteen years' imprisonment. [NOTE E.]

## NOTES.

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NOTE A. p. 62.

IT appears from what the Lord Chief Justice Popham and Lord Salisbury said, that Cobham consented to sign it, only in case the Lord Chief Justice would declare his refusal to be a contempt; and that upon the Chief Justice's declaring, it would doubtless be a contempt of a high nature, he signed it. A few years after Raleigh's trial, an instance occurred of a prosecution, for a contempt of this nature. The Countess of Shrewsbury was charged with being guilty of a contempt, in refusing to subscribe a written paper, containing a statement, which she had made before the privy council, respecting an affair in which she had been concerned. She pleaded in her defence, not that the signing of such a writing might tend to criminate herself, but, first, that she had made a vow not to disclose any thing upon the points in question, which vow was said to be binding upon her; secondly, her privilege of peerage: both which grounds of defence were adjudged to be insufficient; and the judges held, that the refusal to sign was a high contempt, and against the law of England. (2 Howell, 770. 12 Coke's Rep. 95.) On the authority of this case, it has been laid down generally, that a refusal to



answer questions proposed by the privy council, in relation to a matter wherein the interest of the state is concerned, is a contempt against the King's prerogative. (Hawkins, b. 1. ch. 22. sect. 4.) In the present day, an exception would doubtless be allowed in those cases, at least, in which the person might by his answer criminate himself. It is a well established principle of our law, that no person is compellable to criminate himself, or to supply any information which would have that tendency. But this first principle of justice was not observed in the earlier periods of our history. The Duke of Norfolk, it may be remembered, was compelled to answer against himself, on his trial for high treason. See *supra*, p. 25.

NOTE B. p. 66.

The Attorney General, Sir Edward Coke, in his opening speech, and in his answer to Raleigh's objections, stoutly maintained, that the statute of 5 Ed. 6. was no longer in force; and that the term, "lawful accusers," in that statute, was used in contradistinction to "*lawful witnesses*," and intended only to mean "*persons speaking by report*." The same great lawyer, in a later period of his life, when the heat of political feeling had subsided, and he was writing for the instruction of future ages, lays it down, as incontrovertible, that the word, "*accuser*," must be taken, in this statute, as synonymous with "*witnesses*," and that an accuser by report was not a lawful witness; for this, he cites a resolution of all the judges in Lumley's case, in the 14th year of Elizabeth. (See 3 Inst. 25.) In the same work he declares his opinion, that, by the ancient common law, a single witness

was not sufficient to convict a person of high treason, (which opinion, he says, is fortified by writers on English law); and that this rule of our common law is founded on the law of God, expressed in the Old and New Testaments. In support of this, he refers to a passage, which Raleigh had in vain cited at his trial. Sir E. Coke further shows most clearly, that the statutes of 1 Ed. 6. and 5 Ed. 6. had never been repealed; and concludes with these remarkable words, "*Sic liberè animam meam liberavi.*" (3 Inst. 27.)

#### NOTE C. p. 76.

See 2 Rolle Rep. 50. Cro. Jac. 495. The report in the State Trial mentions the sentence of death as having been pronounced by Lord Chief Justice Coke. But this seems to be a mistake. It appears, from the report of the case in Croke, that Sir Edward Montague was the Lord Chief Justice at this time, and that he pronounced the sentence.

#### NOTE D. p. 77.

A deeply interesting account of Raleigh's death is given in the notes at the end of the Trial; and in the Memoirs of the history of James I., by Miss Aikin, vol. ii. p. 104.

#### NOTE E. p. 79.

Hume has made an elaborate defence of the conduct of the King towards Raleigh. (See note 1. vol. vi. of his history.) The facts, upon which he justifies the King and condemns Raleigh, are taken altogether from a statement or declaration published at

the time by royal authority. This statement he considers a document of *undoubted credit* ; representing it to have been *subscribed by six privy councillors*. But it certainly is not true, that the declaration was so subscribed. The document referred to is preserved in the Harleian Miscellany, vol. iii. n. 2. ; and will be found, on inspection, not to bear any signature at all. It was, in truth, nothing but an argument artfully and well written, in vindication of the conduct of the King, and published by authority, for the purpose of justifying the execution of Raleigh, who was viewed by the nation as a peace-offering to the court of Spain. But not one of the members of the Privy Council signed it ; nor does the declaration itself profess to have their assent or sanction.





## THE CASES

OF

EDMUND PEACHAM, for High Treason,

12 James I. 1615.—2 *Howell*, 870.

JOHN OWEN, for High Treason,

13 James I. 1615.—2 *Howell*, 879.

WILLIAMS, for High Treason,

17 James I. 1619.—2 *Howell*, 1086.

HUGH PINE, for High Treason,

4 Charles I. 1628.—3 *Howell*, 359.

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THESE four cases, which are all of the same description, may be conveniently classed together. Although in themselves they possess little interest, yet, perhaps, they may be thought worthy of notice, as showing the temper of the times. The evidence produced in support of the prosecutions is not reported; nor are any particulars of the trials mentioned. The report supplies nothing more than a bare statement of the charge, and the decisions of the Judges.

## 1. PEACHAM'S CASE.

2 Howell,  
870.

Peacham was tried for high treason in compassing the death of the King. The overt-act, charged in the indictment, was the composing and writing a certain treasonable libel. The passages, said to be treasonable, were contained in a sermon of the prisoner, which he had not preached, and had not intended to preach. He was convicted; but not executed. "Many of the judges," says Croke\*, "were of opinion, that this was not treason."

The case of Peacham is that in which Lord Bacon, then Attorney General, exerted himself so unworthily, to procure the opinions of the Judges, separate and apart, previous to the trial: a proceeding, which Sir Edward Coke resisted, as "a species of auricular taking of opinions, not according to the custom of the realm." [NOTE A.]

## 2. OWEN'S CASE.

2 Howell,  
879.

Owen was tried for the same species of high treason.† The overt-act, charged in the indictment, was, that intending the death of

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\* Cro. Car. 125.

† 1 Rolle Rep. p. 185. Godbolt, 263. See Letter cxvi. in Lord Bacon's Works, vol. v. p. 357. 8vo. ed.

the King he had maliciously said of the King, "The King being excommunicated by the Pope may be lawfully deposed and killed by any one, which killing is not murder." The Attorney General, Sir Francis Bacon, in his opening of the case, cited many instances, in which the speaking of seditious words had been adjudged to be treason. The prisoner was convicted; and judgment was passed upon him by Lord Chief Justice Coke, with the assent of the whole court. Whether he was at last executed, does not appear.

### 3. WILLIAMS'S CASE.

Williams was tried on a charge of high treason, for having written two seditious books, in which he pretended to be a prophet, and affirmed that the King would die in the year 1621.\* The judges of the Court of King's Bench were of opinion, that he was guilty of treason; "for," said they, "the words, written by the prisoner, imported the end and destruction of the King and of his realm; false religion is here maintained, which is a motive to the people to commit treason and rebellion." And Montague C. J. ob-

<sup>2</sup> Howell,  
1086.

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<sup>2</sup> Rolle Rep. p. 88.

served, that "treason was defined to be *crimen læsæ Majestatis*; and how can the King be more hurt, than by the buzzing of such opinions in the ears and hearts of the people?" The prisoner insisted, that the matter rested only in opinion and thought, and was not carried into execution, or into any overt act; and that he had so secretly conveyed the book to the King in a sealed box, that it had not been seen or made public. The court replied, that his words showed a traitorous intention, and the treason was in the intent, though no effect might follow; that in this case the thought and intention had been reduced into writing, and *scribere est agere*; and although the book was enclosed in a sealed box, it nevertheless manifested the traitorous intention. Williams was afterwards executed.\*

#### 4. PINE'S CASE.

<sup>3</sup>Howell,  
359.

Pine was indicted for high treason, in imagining the death of the King.† The overt act charged was the speaking certain seditious words, set out in the indictment, which reflected on the King's want of good sense,

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\* Cro. Car. 126.

† Cro. Car. 117.



and his utter unfitness for ruling a kingdom. The words had been used by the prisoner, in conversations with third persons respecting the King. In this case, all the judges were assembled, for the purpose of considering, whether the speaking of the words amounted to treason. A great variety of cases were cited, in which the speaking of seditious words had been adjudged to be treason. But, upon consideration, it was resolved by the judges, that the offence was not treason within the statute of Edward III.\*

There has been, in former times, some difference of opinion upon the question, how far the writing, or speaking of seditious words would constitute the offence of treason, within the first clause of the 25th of Edw. 3., relating to the compassing and imagining the death of the King; of which compassing and imagining, it is to be remembered, the accused is to be *attainted of open deed*. With respect to *words spoken*, it seems to be now settled, on the best authorities, that words of advice and persuasion, to engage another in any such traitorous

Remarks.

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\* The judges gave the same opinion in the case of Bastwick, Burton, and Prynne, 13 C. 1. See 3 Howell. 711. note.

project or design, as would be an overt act of the species of treason above described, and all consultations for such traitorous purpose, are overt acts of high treason\*; for “they are uttered in contemplation of a traitorous purpose actually on foot or intended, and in prosecution of such purpose†;” and it may be added, words, spoken in prosecution of such a traitorous purpose, may, in strictness, be said to be an *overt fait*, within the plain meaning of the statute of treason. But mere words, spoken without reference to any act or project of a traitorous nature, are not, in themselves, overt acts of treason‡; the uttering of such language is not properly speaking an *overt fait*; and words, in general, are so often apt to be spoken from mere passion without deliberation, and are so liable to be mistaken, perverted, misremembered, or misreported, it would be highly unreasonable and dangerous to make loose words, of the description above mentioned, amount to an overt act of high treason. § The argument in

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\* Foster, 200. Rep. temp. Holt, 681.

† Foster, 200.

‡ 1 Hale, P. C. 114. 3. Inst. 14. Foster 200. 4 Black. Com. 80. 2 Salk. 632.

§ 4 Black. Com. 80. Foster 200.

support of the contrary doctrine, (namely, that bare words, of themselves, may be laid as an overt act to prove the compassing of the King's death,) is to the following effect : — Words are the natural way, whereby a man expresses the imagination of his heart ; such imagination may be expressed by words spoken, no less than by words written ; and if it be proved by any means, that a man compasses, or imagines the death of the King, it is high treason ; words, therefore, it is said, may be laid in an indictment as an overt act. [NOTE B.] This argument proceeds entirely on a misunderstanding of the term *overt act*. “Overt acts,” says Mr. Justice Foster, “undoubtedly discover the man's intentions ; but, I conceive, they are not to be considered merely as evidence, but also as the means made use of to effectuate the purpose of the heart. Upon this principle, words of advice or encouragement, and, above all, consultations for destroying the King, very properly come under the notion, of means made use of for that purpose. But loose words not relative to facts are, at the worst, no more than bare indications of the malignity of the heart.” If the term *overt act*, or *overt fait*, used in the statute, were to be understood, as meaning merely the demonstration

of the intent, it would undoubtedly follow, in point of reasoning, that bare words, though spoken without reference to any act or thing done, might be properly laid as an overt act of treason; but if that term is to be understood to include not only the demonstration or evidence of the intent, but also the means employed, or the thing done, to effect that intent, (and this appears to be the true meaning, whether the term is construed in the utmost strictness of language, or according to the probable intention of the legislature in using that term,) then, it is clear, that such bare words cannot be laid, as in themselves amounting to an overt act. But although they are not to be taken as absolutely constituting an overt act, they are always evidence of the speaker's intention in doing any act; and in that manner may render an act (which might, without such explanation, appear to be harmless,) a sufficient overt act of treason. In that case, however, it is to be remembered, the words are not the overt act; but the thing done, which may be properly explained and evidenced by the words, is the overt act, and ought to be so charged in the indictment.

With respect to words *written*, the rule laid down by the best writers, appears to be this:



Papers and letters, written in prosecution of a treasonable purpose contemplated by the writer, and plainly connected with such purpose, are overt acts of treason, although they may not have passed out of the writer's possession ; and papers, written by the prisoner, and plainly referable to the treasonable practices charged in the indictment, though not published, may be read in evidence against him ; but writings, not so referable, are not overt acts of treason, while they remain unpublished in the hands of the writer.\*

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\* Foster 198. 1 Hale P. C. 118. See Sydney's case *infra*, vol. 2.

## NOTES.

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### NOTE A. p. 86.

IN Lord Bacon's works, vol. 5. p. 338., 8vo. edit. the reader will find a string of interrogatories, prepared for the examination of Peacham; on which interrogatories, it is said, "he was examined before torture, in torture, between torture, and after torture."

### NOTE B. p. 91.

This is the reasoning in one of the resolutions of the Judges, preparatory to the trial of the regicides. See Kelyng Rep. 13. It is adopted also by Serjeant Hawkins, B. 1. C. 17. S. 38. The answer, given by Mr. Justice Foster, is irresistible.

THE TRIAL  
OF  
THE EARL OF STRAFFORD,  
ON AN IMPEACHMENT OF  
HIGH TREASON.

16 Charles I. 1640. — 3 *Howell*, 1382. — *Rushworth's  
Hist. Coll.* vol. 8. [NOTE A.]

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THE impeachment of the Earl of Strafford was one of the earliest proceedings in the House of Commons, on the opening of the long parliament, in the autumn of 1640. During the parliament, which met in the spring of the same year, the House had complained of evil counsellors about the King, and had thrown out some not obscure hints of a determination to execute speedy judgment upon them.\* But all proceedings of this kind were stopped by the unfortunate rupture, which took place almost immediately between the King

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\* 2 Parl. Hist. 544. 557.

and the Parliament on the great question of supplies; the Commons requiring a full redress of grievances in the first instance before any thing else could be done, and the King insisting on the precedency of supplies as a prior right. The King disappointed, and ill-advised, in an evil hour suddenly dissolved the Parliament, before it had sat a month. The Commons separated in ill humour, mortified and incensed; but not without a feeling of triumph in having successfully resisted a peremptory demand of the Crown. "A greater damp," observes Lord Clarendon, "could not have seized upon the spirits of the whole nation, than this dissolution caused; and men had much of the misery in view, which shortly after fell out. It could never be hoped, that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill purposes with them; nor could any man imagine what offence they had given, which put the King upon that resolution. It was observed, that in the countenances of those who had most opposed all that was desired by his Majesty, there was a marvellous serenity; nor could they conceal the joy of their hearts; for they knew enough of what was to come, to conclude that the King would be shortly compelled to call another parliament, and



they were as sure, that so many unbiassed men would never be elected again.”\*

The time was now come, when another Parliament was indispensable ; for the exchequer was drained, the resource of ship-money had failed, and loans or benevolences were not to be obtained ; discontent was general through the kingdom, the northern parts openly resisting the government, the southern approaching fast to the same state. In this state of affairs, the new Parliament met in November 1640. Many petitions were immediately presented, complaining of grievances, particularly of the levying of ship-money. And the ordinary business of the House was scarcely finished, when Pym, in a long and elaborate speech, set forth a catalogue of national grievances ; and after paying many studied compliments to the disposition of the King, whom he acquitted of all blame, proceeded to examine into the cause of those evils, which, it was said, had reduced both Church and State to a most dismal and deplorable condition. We must enquire, said he, from what fountain these waters of bitterness have flowed ; who have

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\* Clarendon, vol. i. 139.

insinuated themselves into the royal affections, and contrived to pervert his excellent judgment, abuse his name, and wickedly apply his authority to the support of their own corrupt designs; and though, doubtless, many will be found who have contributed their endeavours to bring this misery on the nation, yet there is one among them pre-eminently bad; a man of great parts and contrivance, and indefatigable in accomplishing his designs; one, who once sat in this house an earnest vindicator of the laws, and a most zealous champion of the liberties of the people. But now, for a long time, has he turned apostate to those good affections, and in the true spirit of apostacy is become the worst enemy to the liberties of this country, and the most active promoter of tyranny, that any age has produced. That enemy is the Earl of Strafford, the Lord Lieutenant of Ireland, and Lord President of the Council in the north. In each of those capacities, and in every province where his services have been employed, he has raised ample monuments of his tyranny, and been the principal author and promoter of all those counsels, which have exposed the kingdom to so much ruin.\* [NOTE B.]

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\* Clarendon, vol. i. 171.

Several other speakers also inveighed bitterly against him ; and the result of the debate was an unanimous resolution to impeach the Earl of Strafford of high treason and other crimes and misdemeanors. A message, announcing this resolution, was immediately carried up to the House of Lords ; and that House, in compliance with the desire of the Commons, ordered Lord Strafford, who was present, into the custody of the Gentleman Usher ; and sequestered him from Parliament, till he should clear himself from the charge. He attempted to offer something in his defence, but was not allowed to speak, and immediately he was led away in custody through a crowd of people ; “ all gazing, none capping to him, before whom, that morning, the greatest in England would have stood uncovered.”\*

The House of Commons, having engaged to present articles of impeachment, appointed a select committee to prepare them, and to manage the evidence at the trial. The committee was composed of the following members : Pym, Hampden, Hollis, Lord Digby, Stroud, Sir Walter Earle, Selden, St. John,

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\* 2 Parl. Hist. 734. 3 Howell, St. Tr. 1385.

Maynard, Whitelock, Palmer, Glyn.\* They acted under a strict injunction of secrecy; and proceeded with such dispatch, that the articles were framed within less than a fortnight. The Commons at first presented to the Upper House seven articles of impeachment; reserving to themselves the right of presenting any fresh articles, according to the course of Parliament, as they might think expedient.† These seven articles were as follows:—

Articles.

I. That Thomas Earl of Strafford hath traitorously endeavoured to subvert the fundamental laws and government of the realms of England and Ireland, and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared by traitorous words, counsels, and actions, and by giving His Majesty advice, to compel by force of arms his royal subjects to submit thereto.

II. That he hath traitorously assumed to himself regal power over the lives, liberties, persons, lands, and goods of His Majesty's subjects in England and Ireland, and hath

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\* Whitelock's Mem. p. 41. † Rushw. 8, 9. 3 Howell, 1385.



exercised the same tyrannically to the subversion and undoing of many, both of Peers and others of His Majesty's liege subjects.

III. That the better to enrich and enable himself to go through with his traitorous designs, he hath detained a great part of His Majesty's revenue, without giving any legal account; and hath taken great sums out of the Exchequer, converting them to his own use, when His Majesty wanted money for his own urgent occasions, and his army hath been a long time unpaid.

IV. That he hath traitorously abused the power and authority of his government, to the encreasing, countenancing, and encouraging of Papists, that so he might settle a mutual dependence and confidence between himself and that party, and by their help prosecute and accomplish his malicious and tyrannical designs.

V. That he hath maliciously endeavoured to stir up enmity and hostility between His Majesty's subjects of England and those of Scotland.

VI. That he hath traitorously broke the great trust reposed in him by His Majesty, of Lieutenant-General of his army, by wilfully betraying divers of His Majesty's subjects

to death, his army to a dishonourable defeat by the Scots at Newborne, and the ruin of Newcastle into their hands, to the end, that by the effusion of blood, by dishonour, and so great a loss as that of Newcastle, His Majesty's realm of England might be endangered in a national and irreconcilable quarrel with the Scots.

VII. That to preserve himself from being questioned for these and other his traitorous courses, he laboured to subvert the right of Parliament, and the ancient course of parliamentary proceedings, and by false and malicious slanders to incense His Majesty against Parliament. By which words, counsels, and actions, he hath traitorously, and contrary to his allegiance, laboured to alienate the hearts of the King's liege people from His Majesty, to set a division between them, and to ruin and destroy His Majesty's kingdom. For all which they impeach him of High Treason against our sovereign Lord the King, his crown, and dignity.

These articles being of a very general and indefinite nature, others were afterwards drawn up, twenty-eight in number, extremely prolix, and containing a multiplicity of distinct charges. On the presentment of the

latter set of articles, the Earl of Strafford was brought before the House; and the articles were read to him on the 30th of January. They consisted of not less than two hundred sheets of paper; and some of the alleged treasons, charged in them, were of fourteen years' standing. Lord Strafford was then directed to prepare a speedy answer. He entreated the House to consider the extreme difficulties, which he had to encounter in answering charges so multifarious, and spreading over such an extent of time; and as the space of three months had been consumed by the House, in collecting evidence and preparing the articles against him, he prayed that the same portion of time might be allowed him for preparing his answer, especially as the matter affected his fortune and even his life. This was opposed by the House of Commons, and at length the Lords, after some difficulty, granted him time till the 24th of February.\* Lord Strafford was then committed for trial, and sent to the Tower.

The Lords had before ordered, that the members of their house, when examined as witnesses, should be examined on oath, and that

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\* Whitelock's, Mem. 41.

the proceedings should be secret. They now ordered, in compliance with an application of the Lower House, that such members as were privy counsellors should, if required, submit to be examined upon oath.\* Lord Strafford petitioned the House, that he might be allowed to call, on his trial, some of the Peers, whom he named as his witnesses; but the House refused to make any order upon this point, and left the Peers, named by Lord Strafford, to their own discretion, to act as they thought fit, provided they did not give offence to the House.†

A question arose before the trial, affecting the privileges of Bishops, whether they could properly attend *in agitatione causæ sanguinis*. Lord Clarendon intimates, that the objection to their presence was first suggested, and strenuously insisted on by the House of Commons.‡ Rushworth's Narrative seems to show, that the Bishops themselves first felt some scruples.§ It is certain, they voluntarily withdrew from the House before the reading of the Earl's answer, and took no part in the subsequent proceedings; at the same time, they

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\* 2 Parl. Hist. 737. 739. † Rushw. 40. ‡ Vol. i. 216.

§ Rush. 34.



made a protestation, that their absence should not prejudice them in this or any other privilege belonging to them as spiritual Peers of Parliament.\* The Earl of Arundel and Surrey was appointed to preside at the trial as Lord High Steward of England, in the absence of the Lord Keeper. Lord Clarendon mentions, that he was appointed to that office by the House of Lords; but this circumstance is not noticed by Rushworth or Whitelock, nor does it appear in the Parliamentary History.

The histories of these times dwell with great particularity on the solemnity of the trial, and the magnificence of the preparations. "Much time," says Lord Clarendon, "was spent in consideration of the manner of the trial."† "Never was there," says Whitelock, "a more solemn and majestic tribunal." The greatness of the trial, remarks another writer, every way answered the high station and employments, into which he had been advanced, and the lofty designs which he had managed. The book of his life, from the time of his admission into the cabinet of his Prince's council, was exposed to the world's view; and the most

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\* 2 Parl. Hist. 742. Rushw. 41.      † Vol. i. 215.

profound knowledge of the laws of our country, the sharpest wit, the deepest wisdom of the kingdom, were employed to scan and measure all his actions.\* A private gallery, beside the chair of state, was prepared for the use of the King and Queen, from which they might command a full view of the assembly, and hear all that passed at the trial, yet remain themselves unseen.† It was observed, that the King did not fail to attend on every day of the trial. And here might he see displayed that dignity and serene composure of mind, which at no very distant period and in the same place were still more eminently exhibited to the world in his own person.

The trial commenced on the morning of the 22d of March, 1640.‡ At the meeting of the Court, the prisoner was led to the bar by Sir William Balfour, the Lieutenant of the Tower. The Lord High Steward addressed him in a few words, stating, that he was called before the Lords in Parliament, to be tried upon an impeachment presented to them by the Commons House of Parliament in the name of themselves and all the Commons of England:

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\* Rushw. Pref. ii. † Rushw. Pref. ii. Clarendon,  
vol. i. 218. ‡ Rushw. 101.

and that the Lords, his Judges, were resolved to hear both the accusation and the defence with all equity. He then directed that the articles of impeachment and the answer of the prisoner should be read. This occupied the whole of the first day.

On the following morning, Pym opened the first article, with an introductory speech, "rhetorical and smart," and then proceeded to lay before the House, the evidence in support of the charge. \*

The first article charged, that the Earl of Art. 1.  
Strafford on the 21st day of March, in the eighth year of the reign of the King, was President of the Council in the northern parts of England, appointed by Commission under the Great Seal, in which Commission certain powers and authorities were appointed and limited to him and the other Commissioners : that by this Commission the Commissioners were authorised and directed to hear and determine, as well according to the course of proceeding in the Court of Star Chamber, as also by the course of proceeding in the Court of Chancery; that the former Presidents of the Council had never put in practice the instructions contained

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\* Rushw. 61, 109. Whitelock, 42.

in this Commission, nor had they any such instructions, yet that the Earl of Strafford had put them in practice, and had exercised exorbitant jurisdiction in the northern parts; that the Commission and its instructions were procured and issued by his advice and solicitation; that he procured further instructions to be given, by which it was declared, that no prohibition should be granted, except in cases in which the Council exceeded their jurisdiction; and afterwards, in the thirteenth year of the reign, procured a new Commission for himself and others, containing the same instructions, with some additions which were unlawful.\*

Several witnesses were called by the managers in support of this charge. The two first witnesses were examined, as to the arrest of their father, who had been arrested in London by order of the Council of York, before the appointment of Lord Strafford as President: and from their evidence it appeared, that, on that occasion, the legality of the arrest being questioned, Lord Strafford fell on his knees, and besought the King, that he might leave his service, unless he were

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\* Rushw. 138.



authorised to pursue any delinquent, who should affront the Court, beyond the precincts of his jurisdiction, and take him back to answer for his misconduct. The third witness spoke of a prohibition, to stop certain proceedings in the Court at York; and stated, that the Lord President declared in Court, that "he would not obey the prohibition, and that if any person brought a prohibition, he would lay him by the heels; that it was a cause which concerned the jurisdiction of the Court of York, and no private man should end it; that he would go to London, and acquaint the Judges with it, and if they did not remand the cause back again, he would appeal to the King."

Lord Strafford protested in his defence, that he had not solicited or procured the Commissions, nor was he in any way privy to them: and as to the execution of them, that he had not done a single act, as President of the Council. And it was proved, on his behalf, that the first Commission was renewed in the regular and usual manner: that he was at York only a few months after its issuing; that he returned to London, and thence proceeded to Ireland; that he did not return to York for three years, and did not do any act as President after the Commission issued in the eighth

year of the reign; nor ever sat as President, after the date of that Commission.

Art. 2.

The second article charged\*, that the Earl of Strafford, in the eighth year of the reign of the King, being President of the Council of York, declared publicly at the assizes, in the presence of the Justices then sitting in Court, that some of the Justices were all for law, and nothing would please them but law; but they should find, that the King's little finger should be heavier than the loins of the law.

One witness stated, that the Earl of Strafford uttered these words, in 1632, as he stood at the bar of the Court. Another stated, that he spoke the words, sitting on the bench, in 1632 or 1633. The deposition of a third witness, then deceased, was to the same effect. But not one of these witnesses explained the subject matter to which the words related, nor did any one know the occasion of speaking them.

Lord Strafford entered fully into this charge, and explained, in a very natural and probable way, the language used by him, declaring that his words were quite the reverse, and that he said, "the little finger

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\* Rushw. 149.

of the law was heavier than the King's loins." Two witnesses also distinctly proved this; one of them, a member of the House of Commons, and a man of the highest character.

Upon this, the managers proposed to call other witnesses, for the purpose of proving the words; to which Lord Strafford objected; but the objection was over-ruled. A witness was called, against whom Lord Strafford objected, that he was at that time in the Fleet Prison, under a sentence of the Star Chamber, at his suit; but this was properly held to be an insufficient exception. He asserted, that Lord Strafford had used the words; but on an occasion, which seemed highly improbable. And another witness, who proved the same words, could not say any thing as to the occasion. Lord Strafford insisted, that the words, if spoken, would not amount to treason—and as they had passed so long ago, and had not been complained of, they could not now be justly brought forward as the subject of a charge against him; and he solemnly protested, that he had not uttered such words, but words of a very different and innocent meaning. The managers, however, claimed the judgment of the Lords upon this article; having, as they insisted, five witnesses against two.

Art. 3.

The third article charged\*, that the Earl of Strafford, being Lord Deputy of Ireland, and intending the subversion of the fundamental laws of that kingdom and the destruction of the people, did, in the ninth year of the reign of the King, declare in a public speech, that Ireland was a conquered nation, and that the King might do with it what he pleased; and speaking of charters granted in former times to Dublin, said, they were worth nothing, and bound the King no farther than he pleased.

Two witnesses proved, that Lord Strafford used such language, addressing himself to the Recorder and Corporation of Dublin, on the presentation of the new Lord Mayor. And three other witnesses stated, that they had heard Lord Strafford in Parliament describe the people of Ireland as a conquered nation.

Lord Strafford in his defence maintained, that the kingdom of Ireland was governed by customs and statutes, by the execution of martial law, and by the proceedings at the Council Board, in a manner entirely different from the laws of England; and that the charters alluded to were void in point of law, and good only at

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\* Rushw. 155.



the pleasure of the King; and that the acquisition of Ireland had been called by the legislature a conquest, and some of the Kings of England had been described as conquerors of Ireland. Then protesting against being called upon to answer on a sudden for words spoken so many years back, and not at the time complained of: — “Errors,” said he, “I may have many; it may be, my tongue has been too free; my heart, perhaps, has lain too near my tongue; but God forbid, that every word should rise up in judgment against me. If every word that is spoken amiss should be observed, who is able to endure it? That words spoken ten, twelve, eight, or nine years ago, should be brought in judgment against me, it is a very hard case. I beseech Your Lordships to turn the case inwards, and tell me, if it be not a hard case to be put upon such an examination.”

Lord Strafford was anxious to produce in his defence the testimony of Sir George Ratcliffe, who had been in his confidence, and was intimately acquainted with all the measures of his Irish administration. But this was objected to by the managers, on the ground that Sir George Ratcliffe stood charged with high treason, as a confederate

with Lord Strafford. And the Peers determined, that Sir George Ratcliffe could not be examined.\* Strictly speaking, the objection against the witness was not a legal objection to his *competency*. It was the common practice, at all times, to receive the evidence of accomplices in support of prosecutions; and if such were competent witnesses *against* a prisoner, they would not be incompetent as witnesses *for* the prisoner. By this decision Lord Strafford was deprived of the most important evidence in his defence.

All communication between Lord Strafford and Sir George Ratcliffe had been cut off by an order of the House of Commons, very soon after Lord Strafford's commitment to the Tower, and a full month before any articles were presented against Sir George Ratcliffe.† And though articles of impeachment were afterwards presented against him, charging him as a confederate with Lord Strafford, it does not appear that any further proceeding took place upon those articles. There is some ground, therefore, for giving credit to the reflection of Lord Clarendon, that the charge against Sir George Ratcliffe was in

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\* Rush. 163.

† Rush. 15. 17.

truth only made for the purpose of disabling him from giving evidence in Lord Strafford's behalf.\* Lord Clarendon adds, "all or most of the other persons, who were in any trust with the Earl, and so privy to the grounds and reasons of the counsels there, and only able to make those apparent, were accused by the House of Commons in that kingdom of high treason, under the general impeachment of endeavouring to subvert the fundamental laws of that kingdom, and to introduce an arbitrary power, which served the turn there, as it had done here, to secure their persons, and remove them from the councils."†

The fourth article charged‡, that the Earl of Cork had sued out process for the recovery of his possessions, from which he was excluded by colour of an order of the Earl of Strafford and the council-table, on a paper-petition without legal proceeding; and that the Earl of Strafford, in the 11th year of the reign of the King, threatened the Earl of Cork to imprison him, unless he would stay his suit, declaring, at the same time, that neither law nor lawyers should dispute or question his orders. It fur-

Art. 4.

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\* Clarendon, vol. i. 214.      † Clarendon, vol. i. 215.

‡ Rushw. 173.

ther charged, that in the same year the Earl of Strafford, speaking of an order of the council-table, made in the reign of King James, concerning a lease claimed by the Earl of Cork in certain rectories or tithes, (which order the Earl of Cork alleged to be of no force,) declared, that he would make the Earl and all Ireland know, that so long as he had the government, any act of state, made or to be made in Ireland, should be as binding on the subjects of that kingdom as an act of parliament. This article further charged, that he on other occasions arrogated to himself a power above the fundamental laws and established government of that kingdom.

Lord Ranelagh, who was called to speak to the course of proceedings at the council-table, prior to Lord Strafford's time, stated that he had been acquainted with the proceedings for twenty-two years, and the practice was, that if title to land came into question, it was commonly dismissed from the board, with an order to have it tried by the course of the common law; and that he never knew matter of title determined at the council-board, except in causes of the church, or of the plantations. Lord Strafford desired that the witness might be asked, whether



it was not common with himself, as President of Connaught, to decide on paper-petitions, like the deputy. But the Lords resolved, that he could not properly be examined on that point, as it tended to an accusation of himself. This resolution would not be approved at the present time. Lord Ranelagh did not claim the interposition or protection of the court, or refuse to answer ; and the proposed question had not any such obvious tendency as was imputed to it. Lord Strafford was thus prevented from entering into an inquiry of the utmost importance to him in his defence.

The Earl of Cork stated, that he had been in possession of a rectory and tithes for thirty-five years as tenant of the crown, and that the Earl of Strafford presented to this rectory one who had been his coachman's groom ; upon which the witness commenced a suit against the person so presented, for the recovery of the tithes. That the Earl of Strafford sent for him, and commanded him to call in his writ, and stop his suit, otherwise that he would commit him to the Castle ; adding, that he would not suffer his orders to be disputed by law, nor by lawyers. He further stated, that a bill had been preferred against

him in the Star-Chamber, after Lord Strafford had come to the government, for taking a lease from a rector for a longer term than the incumbent's life, which was charged to be in violation of an act of state: he submitted to the Earl of Strafford, that he had taken the lease, from charity to the incumbent, at the express desire of the bishop, and that the act of state, which was made in the time of King James, had never been published; that the Earl of Strafford answered, "I tell you, my Lord, as great as you are, I will make you and all the subjects of Ireland know, that any act of state made, or to be made, shall be as binding upon you and the subjects of Ireland during my government as an act of parliament." This, said Lord Cork, was about five years before the trial.

Two other witnesses gave an account of another legal proceeding, which occurred about three years before the trial, in the course of which Lord Strafford had declared, that an act of the Council-board should be as good as any act or statute, — or spoke words to that effect.

Lord Kilmalloch also stated, that he had heard Lord Strafford use similar language at the council-table, some four or five years be-

fore the trial; and that he had heard Sir George Ratcliffe, *who was Lord Strafford's echo*, speaking in parliament in Ireland, in the 10th year of the King, (which was no less than fifteen years before the trial,) on a particular occasion, when a bill had been just rejected by the House of Commons, declare, "It was all one: he would have an act of state for it, which should be as binding as an act of parliament." This hearsay by *echo* was a strange species of evidence, and quite novel in a court of justice!

Sir Pierce Crosby stated, that the Earl of Strafford, on his first arrival in Ireland, said at his dinner-table, in the presence of several persons of high rank, that, if he lived, he would make an act of state to be of equal power with an act of parliament; that Ireland was a conquered nation, and the conqueror should give the law; and that, if any person should rise or except against such act of state, he would lay him by the heels.

In answer to this article, Lord Strafford called Lord Dillon to speak to the jurisdiction of the council-table. The witness stated, that, in the times of former deputies, before the arrival of Lord Strafford, the Lord Deputy and

council proceeded in all causes of plantations, and of the church, by petition, answer, and examination of witnesses, upon oath, as in other courts of equity; that it was the practice to make acts of state at the council-board, on account of the scarcity of parliaments, to be a supplement to acts of the legislature; that he had heard the judges call mere acts of state a kind of law of the land; that, for contempt of these acts of state or proclamations, parties were attached, and, on proof of the contempt, were sometimes fined, sometimes imprisoned, according to the degree of offence supposed to be committed. Sir Adam Loftus proved nearly the same facts. The managers then admitted, that the council-board had jurisdiction of matters of plantation and of the church, but insisted, that it was not a court of record.

The order in Lord Cork's case was produced, for the purpose of showing that the council-table had jurisdiction of the cause, as a cause relating to the church. Another witness for the defence stated, that he had been well versed in the course of proceeding in causes before the council-table, having known it for many years before the Earl



of Strafford's time ; and that the council used to issue injunctions in causes, of which it had cognizance, before any bill filed. But the managers, on the other side, insisted, and apparently with good reason, that the cause of the Earl of Cork was not a cause of the church, as he was lay-impropriator, claiming his right from the crown under the statute of dissolution.

The managers, in reply, called Lord Castlehaven, for the purpose, as they said, of taking off the aspersions cast on Sir Pierce Crosby. He stated, that he remembered a difference between Sir Pierce Crosby and Lord Strafford, but not the occasion of it ; and, as well as he could recollect, Lord Strafford said, an act of state was equal to an act of parliament. The managers desired to examine one other witness, which was objected to by Lord Strafford, as not regular. The Peers, however, having adjourned to consider the point, decided that the witness might be examined ; and this on the ground, that the matter arose from what had been offered in the defence. The witness stated, that the House of Commons having rejected a bill brought forward by the government, Lord Strafford informed the Commons, that he

would make that bill, as well as others, acts of state, or what should be as good.

The managers considered the evidence of Lord Castlehaven to be some justification of Lord Cork's testimony. But no part of this evidence in reply would be now admitted in our ordinary courts of justice. The evidence of the witness might have been properly introduced in the first instance, and was admissible in *chief*, not in *reply*. Lord Strafford had not called any witness to impeach the character or veracity of Sir Pierce Crosby; evidence, therefore, in vindication of his character, would have been wholly irrelevant. And the evidence of Lord Castlehaven had not any bearing or effect in vindication of character, but was altogether of a different description, though it was on this footing that the managers offered it in reply. With regard to the latter part of the evidence, that relating to the words alleged to have been addressed to the House of Commons, it contained new matter and a new charge, against which Lord Strafford had not any opportunity of defending himself. According to the principles now established in our ordinary courts of justice,

all this evidence, which was offered in reply, would be rejected as utterly inadmissible; and the receiving of it, on this trial, could not be justified.

The fifth article charged\*, that the Earl of Art. 5. Strafford on the 12th December, 1635, in a time of full peace, procured a sentence of death to be given by a Council of War against Lord Mountnorris, a peer of Ireland, without any warrant or authority of law, for an offence not deserving any such punishment. This article also charged, that Lord Strafford, without any legal proceedings or trial, gave and caused to be given a sentence of death against some person, whose name was then unknown, and caused him to be put to death in execution of the sentence.†

The sentence against Lord Mountnorris was produced and read, bearing date in December, 1635. It recited a letter from the King, dated in July preceding, commanding that a Council of War should be summoned, to inquire into certain words alleged to have been

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\* Rushw. 186.

† As Lord Strafford was entirely clear of this last charge, and there is not the least ground of suspicion against him, the evidence, offered on this part of the article, is not here noticed.

spoken by Lord Mountnorris, a captain in the army, exciting revenge against Lord Strafford, the Lord Deputy and Lord General; and further commanding that Lord Mountnorris should undergo such censure as the Council of War might impose for the Lord Deputy's full reparation. It then stated, that a Council of War had been held, and set forth the charge against Lord Mountnorris, to the effect following: that one of the servants of the Lord Deputy, at the Presence Chamber, had happened to hurt the Lord Deputy's foot in moving a stool, and this incident being mentioned at the table of the Lord Chancellor, one of the party observed to Lord Mountnorris, that the person who had done it was his *kinsman*, upon which Lord Mountnorris answered publicly and in a contemptuous and scornful manner, "that, perhaps, it was done in revenge of that public affront, which he (Lord Mountnorris) had received from the Lord Deputy, but that he had a *brother* who would not have taken such revenge." The sentence then proceeded to state the proofs of the words, and that Lord Mountnorris submitted himself to the Council, protesting that he had not intended any hurt to the Lord Deputy's person, and that he would die rather



than give him any occasion for rebuke. It further declared, that the words were a calumny to the Lord Deputy and Lord General, and an incitement to revenge ; and that the same words, if spoken of the King, would amount to high treason ; moreover, that the words were spoken, when the Lord Deputy had the honour to be apparelled with the robes of majesty and sovereignty, while part of the army was in motion, and in the presence of the Lord Deputy and Lord General ; that they were a breach of an Article of War, by which it was ordered, that no man should speak any disgraceful words of any person in the army, upon pain of imprisonment, disarming, &c. ; and also in breach of another Article, which commanded, that none should offer violence or contempt to his commander, or do any act, or speak any word, to breed mutiny in the army, or to impeach the obeying of the principal officer, upon pain of death. The adjudicating part of the sentence was, that the Council unanimously adjudged Lord Mountnorris to be thereafter deprived of all places and command in the army, to be disarmed, banished from the army, and disabled from ever bearing office, and to be shot to death, or lose his head, at the pleasure of the General.

This sentence being read, Lord Mountnorris was called to give evidence of what had passed before the Council of War. He stated, that on the 12th of December, 1635, he attended, in pursuance of a summons, at a Council of War held before the Lord Deputy in the Council Chamber. Many members of the Council, and captains of the army, were assembled; but none knew, upon what business they had been summoned. After some delay, the Lord Deputy appeared, and commanded them to be seated. Lord Mountnorris took his seat as Vice-Treasurer. The Lord Deputy informed the Council, that he had convened them, for the purpose of doing him right and reparation against Lord Mountnorris; and complained of some words spoken by that nobleman in the preceding April, which he read from a written paper. He then demanded of Lord Mountnorris, whether he would confess or deny the words. The latter requested, that the charge might be reduced into writing, and that he might be allowed to answer with the advice of counsel. "That is not the course of a martial court," answered the Lord Deputy: "you must answer directly." Lord Mountnorris several times renewed his request, and the

Lord Deputy as often refused it, insisting, that he must immediately answer, whether he would confess or deny. Two or three of the Council said something to the same effect. The Lord Deputy commanded, that Lord Moore and Sir Robert Loftus should be called in ; who affirmed, that the words, contained in the written paper, had been spoken by Lord Mountnorris. "What can you say now," said the Lord Deputy, "since the words are proved to your face." The accused solemnly protested, that he had never spoken the words, as he could prove by witnesses ; and desired, that the Lord Chancellor (at whose table they were alleged to have been spoken) and the Judge Martial, and nearly twenty others, might be summoned to give their testimony in his behalf. But the Lord Deputy peremptorily refused this reasonable request ; and desired Sir Robert Loftus to take his seat as one of the Judges. The accused was ordered to withdraw ; and being shortly afterwards called in again, was required to kneel as a delinquent. The Lord Deputy then commanded one of the members of the Council to pronounce the sentence ; which was accordingly done. The Lord Deputy made a speech, not without many invectives against the accused, concluding with

saying, that "nothing now remained to be done, if it were his pleasure, but to cause the Provost Martial to do execution ;" adding, at the same time, that "for matter of life, he would supplicate His Majesty." Lord Mount-norris was immediately committed to prison, under the sentence, and remained there for six days, when, his life being in great danger, he was released on giving security. As soon as his health was in some degree restored, he was again summoned by the Lord Deputy before the Council-table, and a criminal information exhibited against him in the Star Chamber. After this, he was re-committed to prison for three weeks, by order of the Lord Deputy. On being questioned again respecting the time of his confinement, he said, "I was first committed on the 12th of December; let go the 18th to my house; committed again on the 11th of April; put out the 2d of May: I was then in great extremity, and admitted to my house again, where I lay in a long continuing sickness, under the hands of physicians. And on the 30th of January following, because I sued not out for pardon, was imprisoned again, and there continued till March, 1637."

The next witness was Lord Dillon, one of the members of the Council. He confirmed



the account before given by Lord Mountnorris, as to the circumstances which had passed before the Council of War, and stated, in addition, that the Lord Deputy required the Council to proceed on both Articles of War; that the members of the Council, in giving their votes, professed to give them in confidence that mercy should be extended to Lord Mountnorris; and when the votes were taken, Lord Strafford stretched forth his arm, protesting, he had rather have his arm cut off, than that Lord Mountnorris should lose a hair of his head, or a drop of his blood, and that he would write to the King to supplicate him for mercy. Lord Strafford did not vote; but when Lord Mountnorris was withdrawn, Lord Strafford continued in his place; and after he had set forth the injuries done to himself, he left the affair to the Council. He stated also, on being called up a second time, that, on the reading of the sentence in the Star Chamber, Lord Strafford declared it was a noble and just sentence, and that for his part he would not give up his share of the honour in the business.

Lord Ranelagh, another member of the Council, confirmed, by his statement, the evidence of Lord Mountnorris. He stated also, that he had humbly applied to the Lord De-

puty to know, whether the Council might waive either of the Articles of War; to which the Lord Deputy answered, that he demanded justice on both articles, and would not allow them to proceed according to the King's letter for reparation. On being asked, whether the proceeding took place in the time of full peace, the witness answered, that it was a time of very full and happy peace.

Lord Strafford called witnesses in his defence against this charge. Lord Wilmot, a General in the army, proved, that the Articles of War, and orders for regulating the army, observed in Lord Strafford's time, were the same as those in the times of his predecessors; that martial law was so common in Ireland, and so little offensive, that the common law took no exception to it; but that this law had been used so sparingly, that he never knew any person executed under it in time of peace.

Sir Adam Loftus proved, that at all times, since he could remember, martial law had been enforced in Ireland: but he never knew of any persons executed under it, excepting rebels and outlaws. Lord Dillon proved the same.

Sir Robert Farrer, one of the members of the Council of War, proved, that Lord Strafford declined giving any judgment at the

council, and informed the members that they must not regard him, but consider the case according to their own opinion. He stated further, that he did not know the business for which they were assembled, till the meeting took place.

After Lord Strafford finished his defence to this article, the managers called the Earl of Ely to explain the proceedings of the Marshal's court; which, regularly, should have been explained in the first instance, before the managers had closed their evidence on this part of their case. He stated, that the Lord Deputy, or Governor of the kingdom, always held a commission of martial law; that the exercise of this law was twofold, one part of it summary, the other plenary. The summary part was committed to the Provost-Marshal, who searched for the rebels and kernes concealed in the wood: and when these were apprehended, they were hanged on the next tree. With regard to the plenary part, there were three considerations, of time, place, and persons. The time, must be that of war; the place, in the field; the persons, such as are subject to the rule of martial law. The proceeding was thus: on complaint made against a person appearing, an information

was drawn up in writing, witnesses produced, and their evidence reduced into writing ; then the sentence was pronounced for or against the accused, and, in case of condemnation, a warrant directed to the Provost-Martial to execute the judgment.

In addition to this evidence, the instructions drawn up by Lord Falkland, a former Lord Deputy, were produced, which directed, that such as should be brought to trial at law, should not be executed by the Marshal, except in time of war and rebellion.

Art. 6.

The sixth article charged \*, that the Earl of Strafford, without any legal proceedings, and on a paper-petition of one Rolstone, caused Lord Mountnorris to be disseized and put out of possession of his freehold and inheritance of his manor of Tymore.

In support of this charge it was proved, that the Lord Deputy, with the assistance of the Lord Chief Justice of the Common Pleas in Ireland, had made a decree for giving possession of certain lands therein mentioned to Rolstone ; that Lord Mountnorris was put out of possession, and that the lands were given up under the decree. This, the manager

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\* Rushworth, p. 205.



observed, was assuming a jurisdiction in questions of land without any former precedent.

Lord Strafford insisted, in his defence, that he had not exceeded his jurisdiction, and only exercised a power which had been long exercised by his predecessors. He desired, that his commission and the instructions, formerly given by King James, might be read. The former gave him authority only to proceed *secundum consuetudines terræ*; by the latter the deputy and council were prohibited from meddling with common business within the cognizance of ordinary courts, and from altering possession of land, and from making private orders and hearings, and from making injunctions to stop any civil suits. "This shows," said Lord Strafford, "that, before these instructions were given, the Lord Deputies exercised the power of altering the possession of land, together with the other powers mentioned in the letter."

Lord Strafford then called as witness, H. Dillon, who gave general evidence of paper-petitions preferred in the times of former Deputies, as well for land as for debts. Lord Dillon was also called to speak to the same facts; but his evidence failed, and he was

obliged to admit, that he had not known any one before Lord Strafford proceed on petitions for land.

A letter from the King to Lord Strafford, containing directions for his conduct, was read. This letter, after reciting the instructions given by King James, and that it was necessary to uphold the power of judicature formerly exercised by the Lord Deputies, especially for the relief of poor persons, authorised the Lord Deputy (notwithstanding any former direction, proclamation, or restraint), to hear and determine such causes as should be brought before him, according to the power of former deputies, yet not to meddle with titles of freehold, except in cases of equity; but to refer title of freehold to its proper judicature.

The decree against Lord Mountnorris was also read; after which Lord Strafford observed, that the order was made for relief of a poor man, against an act of violence by Lord Mountnorris; that in making the decree he had the assistance of two very learned judges; and that the decree was in every respect just and equitable.

The managers gave evidence in reply, as to the practice of former Lord Deputies. Lord

Cork, Lord Ranelagh, Sir Adam Loftus, and the Earl of Bath, all of whom had been members of the council about thirty years before Lord Strafford's time, stated, that they had never known the Lord Deputy alone determine any matter of land in equity or otherwise, except in cases of the church or of the plantations; that the Lord Deputy had proceeded alone, in cases of *debt*, for the relief of poor persons, but not in cases of *land*. And they impeached the credit of one of Lord Strafford's witnesses (H. Dillon), by proving a written acknowledgment made by him, in which he confessed, that he had declared some untruths before the council-board, and expressed his contrition.

After this article the managers passed over the seventh, and were proceeding to the latter part of the eighth, when Lord Strafford declared himself unable any longer to endure the fatigue of the day. "Turn your eye inwards," said he, "look into the recesses of your own hearts, and then judge, whether you will not allow a respite for a few short hours in so weighty a cause, which involves my life, my honour, the fate of my children, and all I have." Upon this the Court adjourned.

The latter part of the eighth article, which Art. 8.

charged, that a petition had been exhibited to the Earl of Strafford, by Thomas Hibbotts, against Dame Mary Hibbotts\*; that the Earl of Strafford recommended the petition to the council-table, when the greater part of the council gave their vote and opinion for the lady; but the Earl of Strafford finding fault therewith, caused an order to be entered against her, and threatened her, that, if she refused to submit to it, he would imprison her, and fine her a hundred pounds; and that, if she continued obstinate, he would continue her imprisonment, and double her fine every month; by means whereof she was forced to relinquish her estate in the lands questioned in the said petition, which shortly after were conveyed to the use of the Earl of Strafford.

It will not be necessary to enter into the particulars of the proofs on this article, as the managers entirely failed in establishing any case against the accused. There was no proof, that the vote of the majority was in favour of the lady against the petitioner; or that the estates were conveyed to the use of Lord Strafford. On the contrary, it was proved, on behalf of Lord Strafford, by some

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\* Rushworth, p. 221.



members of the council, that the judgment, which was signed by the Lord Chancellor and eleven other members of the council, was pronounced for the *petitioner* against Dame Mary Hibbotts, and that the judgment was drawn up in the usual and regular manner.

The ninth article charged\*, that the Earl of Strafford, assuming to himself a power above and against law, took upon him, by a general warrant under his hand, to give power to the Lord Bishop of Downe and Connor, and his chancellor or chancellors, and his several officers thereto to be appointed, to attach and arrest the bodies of all such of the meaner and poorer sort, who, after citation, should either refuse to appear before them, or should refuse to perform all lawful decrees and orders issued against them, and to commit and keep them in the next gaol, until they should perform such sentences, or put in sufficient bail to show some reason before the council-table of their neglect and contempt.

Art. 9.

The first piece of evidence, in support of this charge, was a copy of the warrant, which was proposed to be read in the place of the original. Lord Strafford insisted, that the copy

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\* Rushworth, p. 236.

was not admissible, and that it would not be allowed in the Court of King's Bench. The objection was clearly well-founded; but the Lords admitted the evidence. The warrant recited, that the greatest contempts against the ecclesiastical jurisdiction had been committed by the meaner and poorer sort of people, and that they had become more frequent in consequence of the difficulty of executing the writ *de excommunicato capiendo*; then it proceeded to give the Bishop of Downe and Connor the powers, mentioned above in the article.

Sir James Montgomery, a witness, on being asked how this warrant was executed, answered, that sometimes twenty, sometimes thirty, or even more names, had been inserted in the warrants, and that he had known them executed with great cruelty.

On the part of Lord Strafford, it was proved, that the warrant had been drawn from a precedent, existing before the time of Lord Strafford, in the hand-writing of Lord Falkland; that this was the only warrant issued by Lord Strafford, and that Lord Strafford himself forbade the issuing of any other such warrant.

Art. 10. The five next articles (omitting the eleventh and fourteenth, which the committee of managers abandoned), were of a very singular description, considered as articles of high

treason. The first of these articles charged\*, that the Earl of Strafford, having procured the customs of exports and imports to be farmed to his own profit, overrated the commodities of hides and wool, and by these means raised the customs, to the oppression of the subject and to the decay of merchandize.

Never before had the price of a hide or a fleece formed an ingredient in a charge of high treason. And never before had so able a lawyer as Serjeant Maynard (who managed this article), the irksome task of maintaining, that the raising of the customs, to the prejudice of the subject, was "a high and great treason." In the most arbitrary period of our history, the doctrine of constructive treason was never so perverted, nor ever carried to such an extravagant length, in any prosecution at the instance of government, as in this impeachment by the Commons of England.

Lord Strafford, who fought the ground with his accusers inch by inch, defended himself against this paltry charge, by arguing that the regulations, which he had made in matters of trade, were beneficial to the government. Serjeant Maynard maintained the contrary; and, to prove his proposition, opened a budget of details

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\* Rushworth, p. 241.



on the prices of various commodities, and on the produce of the customs for a long series of years; a statement of which would only fatigue and perplex, without leading to any certain or useful result. Whether the one side or the other had the best of the argument—whether Serjeant Maynard or Lord Strafford was the soundest political economist—is a matter wholly irrelevant to the merits of this great cause, and beneath our notice. It was, as the accused remarked, “a business for the merchants;” a question for the ledger and the counting-house, but unworthy of the august tribunal of the House of Peers.

Art. 12. The committee of managers passed over the eleventh article, and proceeded to the twelfth, which was, like the tenth, of a commercial cast, and entitled to about the same degree of respect. It charged the prisoner with laying restraints on the importation of tobacco, and afterwards importing great quantities for his own profit, and engrossing to himself a monopoly of tobacco; it charged further, that he raised other monopolies, and other unlawful exactions, on starch, iron-pots, glasses, tobacco-pipes, and several other commodities.\* This article, for the reason before given, may be neglected.

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\* Rushw. p. 402.



The thirteenth article was something of the same kind as the last ; complaining of a vexatious restriction on the sale of yarn.

Art. 13.

The most minute details were given in evidence (which the reader would not wish to be stated), as to the prices of tobacco at various periods; and on these details, absurd and preposterous as it may appear, the committee built up a charge of double treason. "First," said they, "here is an exercising of arbitrary power, by imposing any tax he may choose. Secondly, he has deprived the King of his estate, under colour of advancing his revenue ; which is to deprive the King of his government. For, if one takes away my means of livelihood and defence against an enemy, it is killing of me round about, though it were a more immediate killing of me to run me through."

The committee, having given up the fourteenth article and the first part of the fifteenth, proceeded to the latter part of the last mentioned article. This charged\*, that the Earl of Strafford traitorously gave authority by his warrants to the captains of companies of soldiers in several parts of Ireland, to send numbers of soldiers to lie on the lands and houses of such as would not conform to his orders, until they

Art. 15.

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\* Rushworth, p. 427.

should submit ; which warrants were, in warlike manner, with force and arms, put in execution. It charged further, that he traitorously caused troops of horse and foot, in warlike array, with force and arms, to expel divers of His Majesty's subjects from their lands, houses, and possessions and imprisoned and detained them in prison, till they surrendered their estates and rights. And that he subdued many of the King's subjects to his will, and levied war within the realm, against the King and the liege people of the kingdom.

The first witness produced the copy of a warrant, which had been directed to him by the Lord Deputy ; the original he had left behind in Ireland. This copy was objected to by Lord Strafford ; and the Lords, having adjourned to consider the point, properly determined, that the evidence was inadmissible. The witness, however, was allowed to state (what was secondary evidence of the warrant, and fully as objectionable as the copy, which had been rejected), that the warrant, under which he laid soldiers on the lands of several delinquents, was delivered to him by the Lord Deputy's secretary, signed by the Lord Deputy : that the practice with the Lord Deputy, on receiving a complaint, was, in the first instance, to issue his command ; if

this was not obeyed, and the party gave not satisfaction, a warrant was issued; if the party absented himself or could not be found, another warrant issued to a serjeant-at-arms, who, in case of his being unable to take the party, was to lay in soldiers. On being asked, what he meant by *laying in* of soldiers, he answered, that the serjeant is to go to the captain or chief officer of the next company or garrison, to complain of the party, called a *delinquent*, and to show the Lord Deputy's warrant; then the officer commands them to rise with such a number as the serjeant should in his discretion think convenient, and to march to the party complained of, in whose house they lie, till they receive further directions; and the soldiers have their meat and drink from the house in which they lie. The witness had done this, in many instances, under the Lord Deputy's warrant. Many other witnesses gave evidence to the same effect, and some of them described the havoc and horrible excesses committed by the soldiers, who were thus laid upon the delinquents. None of the warrants, said to have been signed by the Lord Deputy, were produced in evidence, and the secretary of Lord Strafford, who was called by the managers, stated, that he did not remember any such warrant as that



mentioned by the witness, to pass through the office ; that he himself never made it out, nor knew of it.

Lord Ranelagh stated, that there had been a custom in Ireland for laying soldiers on the relievers of rebels, and for contribution-money, in case of delinquency, or non-payment ; and where a return was made by the sheriff, that the King's rents, which were applied to the payment of the army, did not come in, the course, before Lord Strafford's coming, was, that the soldiers were employed to constrain such ; but the witness had never before heard of such a practice in a civil cause between party and party.

The statute of 18 H. 6. c. 3. was then read, which enacted, that no lord or any other, of what condition soever he be, should bring or lead thenceforth *hoblers, kerne, or hooded men*, nor *Irish* enemies, nor any other people, nor horse, to lie on horseback, or foot, to lie on the King's people, but on their own cost, without consent. And if any so do, he shall be adjudged a traitor.

Lord Strafford, in his defence on this article, urged, that the commission, under which he acted, was to execute the duties of his office according to the laws and customs of Ireland ; that these laws and customs were different from those in England, and that he ought to



be judged by the laws and customs of Ireland, not of England ; that what had been declared by the managers to be so extraordinary, he must justify as ordinary, frequent, and usually exercised by the custom of the country ; that in all times the officers and soldiers of the army had been the persons chiefly employed in executing the justice of the kingdom, and for enforcing obedience to the laws ; and without their aid, the King's writ would not run in Ireland ; that, for the purpose of forcing rebels and offenders to come in, it had been the ordinary practice of the Lord Deputy and the council to assess soldiers not only on the party, but also on the kindred of the party.

In support of this defence, Lord Dillon was first called. He explained the term *rebel*, by stating, that when a party had committed some felony or unjustifiable act, and withdrawn into the woods, a proclamation was made for his coming in, and giving himself up by a certain time ; and if before that time he did not surrender, he would be accounted in common reputation a traitor or rebel.

Another witness stated, that in the time of Lord Falkland, who was Lord Deputy, it was the ordinary course, when the King's rents were due, to send horsemen to collect the

rents, and lie on the parties, till they were all collected. So was the practice also, in the times of Lord Grandison and Lord Chichester. Another witness, proved the same practice to have prevailed in the time of Lord Cork and Lord Ely.

One of the written articles of instruction, which had been given to Lord Falkland, was read in evidence, which directed, that for default in payment of the King's rent, a summoning process should first issue; secondly, a pursuivant should be sent; and if this should not be sufficient, the Vice Treasurer, by warrant of the Lord Deputy and Council, should appoint a competent number of soldiers of the next garrison to collect the rents at the charge of the parties complained of; care being taken, that no man should be burthened with a greater number of soldiers than the service necessarily required.

With regard to the statute of 18 H. 6., which was much insisted on by the managers, Lord Strafford insisted, that the enactment did not extend to the Lord Governor, but only to inferior lords and the commons; and that this appeared more clearly to be so, from a statute in the reign of Elizabeth, against the assumption of absolute military authority by

the lords and chieftains, which forbade, under heavy penalties, all exercise of power there prohibited, without the authority of the Great Seal or warrant from the Lord Deputy;—which implied, it was said, that the Lord Deputy, by his warrant, might exercise such powers.

The sixteenth article charged\*, that Lord Art. 16. Strafford, intending to oppress the subjects of Ireland, made a proposition to His Majesty, and obtained an allowance thereof, that no complaint of injustice or oppression done in Ireland should be received in England, unless it appeared that the party first made his address to the Earl of Strafford. And to prevent the subjects of that realm from having any means of complaint to His Majesty, or of redress against him and his agents, the said Earl issued a proclamation, commanding all the nobility and others, who held estates and offices in the kingdom (except such as were employed in His Majesty's service, or attending in England by his special command), to make their personal residence in Ireland, and not to depart without licence from himself. And that the said Earl, by several rigorous ways, as by

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\* Rushw. p. 460.

fine, imprisonment, and otherwise, put the said proclamation in execution on His Majesty's subjects, who came over to complain of the oppressions of the said Earl.

The proposition above stated was proved ; and the proclamation enforcing it. Instances also were shown, in which the Lord Deputy had refused his licence to come into England ; particularly in the cases of Lord Esmond, Lord Roche, Desmond M'Carty, Parry, and Sir Robert Linch. In the case of Parry, Lord Strafford had issued a warrant to apprehend him for quitting Ireland without a licence.

Lord Strafford, in his defence, desired to have read a statute in the 26th year of H. 6., which enacted, that none of the King's liege men, or officers, in the land, should go out of the land, but by commission from the King, his Lieutenants, Justices, &c. ; and that all their rents, offices, or other possessions, should, for their said absence, be seized into the King's hands. The term, *King's liege men*, he insisted, applied to all persons whatsoever. He desired also, that the statute 25 H. 6. c. 9. should be read, which enacted, that if any liege man be out of the kingdom, by the command of the King, or the Lieutenant there, deputy



justices or council, their rents should not be seized. Whence, he argued, it must be inferred, that they are punishable, if they go without licence.

An order of the King was then read, dated in 1628, made in answer to a petition by Irish agents in England; by which order the King commanded all persons, holding estates and offices in Ireland, to make their personal residence there, and not to depart without licence. The instructions from the King to Lord Falkland, a former deputy, were to the same effect. The King's letter, also, to the Earl of Strafford, in pursuance of which the proclamation had been issued, was read in evidence; and he justified the warrant in Parry's case, under a judgment of the council-board, for great contempts to the board. By this judgment it was ordered, that he should be fined 500*l.*, and should stand committed in the castle during the King's pleasure.

The managers in reply insisted, that the statute 25 H. 6. only warranted the seizure of *lands*, in case any persons, not holding lands or office, should depart without licence; but that their *persons* could not be legally restrained. And, in answer to an argument of

Lord Strafford, that by the law of England all persons might be restrained from departing the kingdom without licence, the managers replied, with truth, that this was not the law of England. "It is no offence, or contempt (said they), for any subject to depart this land without licence. Our books are so. The statute 5 R.2. did provide, that none should depart without licence (which was a general prohibition), except they were Lords and good merchants. By the law, therefore, as it was before that statute, any man might depart without licence, and that statute was repealed by the subsequent statute of 4th of James. So that, by the common law of England, the passage is open again; and it is no offence at all to depart without licence. It is true, the King may restrain by writ of *ne exeat regno*, or by proclamation for special causes, but till then the passage is open, and they may depart by the law of the land."\*

Art. 19. The managers passed over the seventeenth and eighteenth articles, and proceeded to the nineteenth, which charged†, that Lord Strafford had by his own authority framed a new and unusual oath, by which the party was to swear,

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\* Rushw. p. 483.

† Ibid. p. 489.

that he would not protest against any of his Majesty's commands, but submit himself to them in all obedience ; which oath he enforced on the subjects of the Scottish nation, inhabiting in Ireland, against their will, and such as refused to take the oath he grievously fined, imprisoned, and exiled. That he fined Stewart and his wife, who refused to take the oath, 5000*l.* each, and also their two daughters 3000*l.* each, and imprisoned them for not paying the fines ; and that upon the same occasion he declared, that the oath did not only oblige them in point of allegiance, but bound them also to the ceremonies and government of the church-establishment ; and, that if any refused to obey, he would prosecute them to the blood.

It appeared from the evidence of Sir James Montgomery, that Lord Strafford had summoned him and the other gentlemen and noblemen of the Scottish nation, to attend him on a conference at a fixed time, concerning the King's special service ; that, at the meeting which took place, Lord Strafford mentioned the great disorders in Scotland, and said, it behoved all present to vindicate themselves from the suspicion of favouring such disorders ; and intimated to them, that as some had joined in a covenant in Scotland, an oath would also be

expected from them; but that they should themselves freely propose this, and be suitors for the oath, and not wait till it should be imposed by authority. Thanks were returned to the Lord Deputy, and a petition agreed upon, which the Bishop of Raffo was appointed to draw up in form. Sir James Montgomery expressed some doubt as to the propriety of the proceeding; on which the Lord Deputy told him, he might go home, and petition or not, as he chose; but, that if he did not petition, it should be worse for him. The petition was drawn up, and an oath framed under the superintendence of the Lord Deputy. Commissioners were appointed for administering the oath, to all of the Scottish nation above the age of sixteen, and a proclamation was issued for taking the oath. Some took it, some expressed scruples of conscience. The names of those, who refused, were certified, and warrants afterwards issued to apprehend them. Many fled from Ireland into Scotland; some fled up and down the country, leaving their goods in their houses, and their corn on the ground; some were apprehended. Two other witnesses gave evidence to the same effect.

Two witnesses also proved the sentence



against Stewart in the Star-chamber, and the fines imposed on him, and on his wife and daughters, for refusing the oath. One of these witnesses stated, that Stewart had no objection to take the first part of the oath touching his allegiance; but that he had a scruple on the latter part, if it related to ecclesiastical matters. Lord Strafford declared, that the oath was intended to force the parties to obey the ecclesiastical ceremonies of the church, which were then or should afterwards be established. The other witness said, that Lord Strafford threatened, as for those who would not conform themselves to the government of the church, he hoped to root them up stock and branch.

Lord Strafford proved, in his defence, that the meeting of the Scottish nobility and gentry was in pursuance of a resolution of the council-board; that the measure of framing an oath was adopted by the council after much deliberation, for the security and peace of the kingdom, at a time of extreme alarm and danger. It was further proved, that a similar oath was framed in England, to be required of the Scottish people there resident; that the oath, framed by the council in Ireland, was framed in obedience to a royal proclamation; and that the sentence, pronounced on Stewart,

was the unanimous sentence of the whole council. Several of the judges, also, who concurred in the judgment against Stewart, were called to prove what passed, and for the purpose of showing, that Lord Strafford had not used the language imputed to him. Their evidence amounted to this, which was all that could be expected where the transaction had occurred so long before : — they none of them heard him use those expressions.

Art. 20. The five next articles were taken together by the committee of managers. The twentieth article charged \*, that the Earl of Strafford endeavoured to persuade and incite the King to an offensive war against the Scottish nation, and by his counsels and actions was the chief incendiary of the war between the King and his Scottish subjects ; and that he declared, that the Scots were rebels and traitors, and that if it pleased the King to send him back again to Ireland, he would root them out of that kingdom, root and branch.

Art. 21. The twenty-first article charged †, that having incited the King to an offensive war, he compelled the King, under pretence of raising forces, to call a Parliament ; and, in case the

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\* Rushw. p. 515. † Ibid. p. 516.

proceedings of Parliament should not stand with his mischievous designs, that he intended to raise money upon the people by force, and declared in council before the King and Privy-council, that he would serve his Majesty in any other way, in case the Parliament should not supply him.

The twenty-second article charged \*, that he Art. 22. procured the parliament of Ireland to declare their assistance in a war against the Scots, and gave directions for raising an army of 9000 men, and traitorously conspired to employ that army for the destruction of his Majesty's subjects, and for subverting the established government of England.

The twenty-third article charged †, that he Art. 23. traitorously advised the King to this effect, — that, having tried the affections of his people, he was absolved from all rules of government, and that he was to do every thing which his power would admit; and that, having tried all ways, and being refused, he would be acquitted towards God and man; and that he had an army in Ireland which he might employ to reduce this kingdom.

The twenty-fourth article charged ‡, that he Art. 24.

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\* Rushw. p. 517.

† Ibid. p. 518.

‡ Ibid. p. 519.

traitorously declared before the Privy-council, that the Parliament had forsaken the King; and that, in refusing to supply him, they had given him advantage to supply himself in other ways, and that he might supply himself as he thought fit, and that he was not to suffer himself to be mastered by the frowardness and undutifulness of the people.

Art. 20.

In support of the twentieth article, Lord Traquair was first called.\* He stated, that he heard Lord Strafford say, in a debate at York, at the council-table, he conceived that the unreasonable demands of the Scots in Parliament were a ground for the King to put himself in a posture of war; that Lord Strafford and all in the council declared, that, if the Scots should not give good reasons for their demands, they would assist the King, and put him in a posture to reduce them to obedience. The Bishop of Lincoln gave similar evidence, adding, that others expressed the same opinion as Lord Strafford. The examination of Lord Merton, who was ill, was admitted, after argument, to be read in evidence, and was

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\* Rushw. p. 524.



nearly to the same effect as Lord Traquair's evidence.

Sir Henry Vane, Treasurer of the King's household and principal Secretary of State, was next sworn. On being asked, whether about the 5th of May, 1639, he heard Lord Strafford persuade the King to an offensive war against the Scots ; he answered, that the King had given him permission to answer this question ; that he remembered, about the 5th of May, after the dissolution of Parliament, at a meeting of the council, when several Lords were present, all were commanded to speak what was fit to be done, and every man to vote in his turn ; that he himself took his turn among the rest. He remembered well, that the question of a defensive war was proposed by himself ; this was not approved, and Lord Strafford was of opinion for an offensive war. He added, this was all he could say to the question put to him.

The same question was put to the Bishop of London, who was the Lord Treasurer. He answered, that he remembered the advice which Lord Strafford gave publicly in council at the council-board ; that he as well as others advised (which was afterwards re-

solved upon), that, if the Scottish commissioners should persist in their demands, the King should prepare to reduce the Scots by force; he believed this to be the substance of Lord Strafford's advice. At a subsequent meeting of the council, when the question was discussed, there were different opinions; he believed, that Lord Strafford was in favour of an offensive war, and he did not perceive any difference in the main in the opinions of any of the council.

Lord Conway proved\*, that Lord Strafford, in a private conversation with him, in which he asked Lord Strafford what could be done if Parliament should not supply the King, answered, that the King had need, and, if Parliament would not supply him in those things that were just and lawful to be supplied, the King was justified, before God and man, if he helped himself in the goods of his subjects, though against their wills: or words to that effect.

Sir Henry Vane was called again, and asked, whether he did not hear Lord Strafford promise the King, that, in case the Par-

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\* Rushw. p. 535.

liament did not succeed, he would be ready to serve him in any other way? He answered, that he did hear Lord Strafford speak words to that effect, to his best remembrance.

The opinions and declarations of Sir George Ratcliffe and of Sir George Wentworth, who were represented to be the *creatures* of Lord Strafford, were received in evidence against him ;—a most unjustifiable proceeding. And, to make this species of evidence still more objectionable, the committee asked the witnesses such questions as these : What was Sir George Ratcliffe's *reason* for saying so? — what the witness *conceived* Sir George Ratcliffe *meant*? — what another person *imagined* to be Sir George Ratcliffe's *intention*?

Sir Thomas German was asked, in support of the twenty-fourth article, whether he did not hear Lord Strafford tell the King, that the Parliament had denied to supply him, or had forsaken him? He answered, that he remembered, he heard Lord Strafford say something of the Parliament's deserting him, or forsaking the King, or something to that effect or purpose ; but he did not remember, what inference Lord Strafford made upon it, nor could he remember any thing further upon the point.

The Earl of Bristol was asked, whether he had heard any words spoken by Lord Strafford, to this effect, that, — in this great distress of King and kingdom, the Parliament had refused to supply the King in the ordinary way, and that, therefore, the King might provide for the kingdom by such ways as he thought fit, and was not to suffer himself to be mastered by the frowardness and undutifulness of his people? He answered, that he could not speak precisely to the words, but that, about twelve months before, in a private and accidental discourse with Lord Strafford, he (Lord Bristol) attributed all the disorders of the kingdom to the dissolution of the Parliament; and said to Lord Strafford, he thought the summoning of a new Parliament would be the only way of quieting the times. Lord Strafford answered, he thought this course was not advisable, for the Parliament had, in the great distress of the kingdom, refused to supply the King in the ordinary ways, and, therefore, the King must provide for the safety of the kingdom by such ways, as he should think fit in his wisdom. And further, said the witness, (not to bind himself to words but to the sense), Lord Strafford used these words, or words to this effect, that the King was not to suffer himself to be mastered by



the frowardness or undutifulness of his people, or rather (as the witness conceived) by the disaffection and stubbornness of some particular men.

Lord Newburgh said, he believed he heard Lord Strafford say at the council-table some words to this effect, — that, seeing Parliament had not supplied the King, His Majesty might take other courses for the defence of the kingdom : he verily believed he heard him speak something to this purpose.

The Earl of Holland gave evidence nearly to the same effect.

The Earl of Northumberland's examination was read, in support of the latter part of the twenty-third article. It stated, that Lord Strafford had said, " In case of necessity, for the defence and safety of the kingdom, if the people refuse to supply the King, the King is absolved from rules of government, and His Majesty is acquitted before God and man." Another part of the examination stated, that Lord Strafford declared, in His Majesty's presence, that the design was to land the Irish army in the western parts of *Scotland* ; but he did not remember to have heard, that these forces or any other were to be employed in *this* kingdom.

Sir H. Vane was called again to speak to the words, set forth in the twenty-third article. He said, he would ingenuously deliver what he before deposed, always reserving to himself "*words to the same effect*:" and protested, that he had never, in the whole course of his life, loved to tell an untruth, much less in that honourable assembly. "It is true," said he, "the words, I am to testify, were spoken at the committee for the Scotch affairs, at a debate, when the question of a defensive or offensive war was discussed. Lord Strafford then said, in a discourse, "Your Majesty having tried all ways and being refused, in a case of this extreme necessity, and for the safety of the kingdom, you are acquitted before God and man. You have an army in England which you may employ *here* to reduce *this* kingdom;" or he spoke *some words to this effect*. And this, said the witness, is the truth, to my best remembrance, if it were the last hour I had to speak. He was asked to repeat, what Lord Strafford had spoken; when the witness said, that there was a debate, whether there should be an offensive or defensive war with Scotland: he then repeated his former account, varying a little at the conclusion, and affirming that Lord Strafford used these words, "You have an army in

Ireland, you may employ it to reduce *this* kingdom." [NOTE C.]

Lord Strafford then entered upon his answer to these articles. He explained some of the expressions imputed to him, justified others, pointed out contradictions in the evidence of the several witnesses, and argued, that, even if all the words were clearly proved, they would not be treasonable. He urged, that he had only given his opinion in the same manner as other lords of the council, and as they were all required to do. That, as a war had been resolved on, and the question, put to the members of the council, was, whether the one mode of carrying it on or the other were most advisable, he was bound to deliver his opinion honestly and freely, and that in this there could not be treason. That reasons were given on the one side as well as on the other, and he was as free from error or offence, as those who differed from him in opinion. That the words were used by him only in the way of argument, in common discourse, or at the council-table, and nothing was done to carry them into effect. That as to the words, importing advice to invade England by the army in Ireland, he had never used such words, nor ever conceived such an idea.

It was proved by witnesses, on behalf of Lord Strafford, that there was not any design to land the Irish army in *England*, but in *Scotland*; and that Lord Strafford, with others of the council, approved of this plan.

The Earl of Northumberland, Marquis of Hamilton, the Lord Treasurer, Lord Cottington, (who were present at the time, when the words were alleged to have been uttered,) stated, that they did not hear Lord Strafford use such words, or any to that effect.

Lord Cottington and the Marquis of Hamilton stated, that they had heard Lord Strafford declare to the King his opinion, that the kingdom could not be happy without a good understanding between the King and his people. And Lord Cottington said, the advice, which Lord Strafford gave to the King on the exercise of his prerogative, was, that he should employ it *candidè et castè*. The examination of the Earl of Northumberland stated the same, adding, that Lord Strafford said, an account ought to be given to Parliament as to the exercise of the prerogative, that Parliament might see how it had been used.

Lord Strafford defended himself with great spirit and force of argument against the



charge of having spoken the words imputed to him. "Shall words," said he, "spoken by way of argument, in common discourse between man and man, when nothing has been done upon them, shall such bare words be brought against a man, and charged on him as high treason? God forbid, that we should ever live to see such an example in this kingdom. If words, spoken to friends in familiar discourse, spoken in one's chamber, spoken at one's table, spoken in one's sick-bed, spoken perhaps to gain clearer light and judgment by reasoning, — if these can be brought against a man as treason, all intercourse, all confidence, all the comfort of human society are destroyed. Let no man henceforth venture to impart his solitary thoughts to his friend or neighbour."

Then adverting to the words, alleged to have been spoken by him at the council-table; "These words," said he, "were not wantonly or unnecessarily spoken, or whispered in a corner; but they were spoken in full council, where, by the duty of my oath, I was obliged to speak according to my heart and conscience, in all things concerning the King's service. If I had forbore to speak what I conceived to be for the benefit of the King and the people, I had been perjured towards Almighty

God. And for delivering my mind openly and freely, shall I be in danger of my life, as a traitor? If that necessity be put upon me, I thank God, by his blessing I have learned, not to stand in fear of him who can only kill the body. If the question be, whether I must be traitor to man, or perjured to God, I will be faithful to my Creator. And whatsoever shall befall me from popular rage or from my own weakness, I must leave it to that Almighty Being, and to the justice and honor of my judges.

“My Lords, I conjure you not to make yourselves so unhappy, as to disable yourselves and your children from undertaking the great charge and trust of the commonwealth. You inherit that trust from your fathers; you are born to great thoughts; you are nursed up for the great and weighty employments of the kingdom. But if it be once admitted, that a counsellor, delivering his opinion with others at the council-table, *candidè et castè*, under an oath of secrecy and faithfulness, shall be brought into question, upon some misapprehension or ignorance of law — if every word, that he speaks from a sincere and noble intention, shall be drawn against him, for the attainting of him, his children and

posterity—I know not (under favor I speak it,) any wise or noble person of fortune, who will, upon such perilous and unsafe terms, adventure to be counsellor to the King. Therefore, I beseech your lordships, so to look on me, that my misfortune may not bring an inconvenience upon yourselves. And though my words were not so advised and discreet, or so well weighed, as they ought to be, yet I trust your lordships are too honourable and just, to lay them to my charge as high treason.”

It may here be remarked, that the evidence of the Privy Counsellors, which was brought forward, against Lord Strafford, for the purpose of proving the advice given by him at the council-table, when he was acting in the discharge of his duty as Privy Counsellor, appears, on all the soundest principles of evidence, to have been inadmissible; or perhaps, it might be more correct to say, such evidence would now be considered inadmissible in our ordinary courts of law. The counsels of the state, to be honest and free, must be secret and secured from exposure. If mere professional communications between an attorney and his client are not to be revealed, (that men may consult on their private affairs with safety,) with much

more jealous care should the state-counsels be guarded, and respected at all times as inviolable. The King, in this instance, we are informed, unadvisedly consented to the examination of his counsellors; and therefore, perhaps, so far as regarded himself, might absolve them from their oath of office. But if the inviolability of the secrets of the Privy Council be a principle of evidence established in our courts of justice, and founded not so much on a regard to the oath taken by Privy Counsellors, as on a consideration of public interests and of state-policy, (that the most important public business and state-affairs may be debated in the cabinet without personal danger,) then it seems to follow, that the acquiescence and consent on the part of the crown, to their examination, could not absolve them from the established law, nor suspend, or in any manner vary, the rule of evidence.

The evils, resulting from the violation of this principle, are well described by Lord Clarendon. "The damage, was not to be expressed," says that noble historian, "and the ruin, which this last act brought to the King, was irreparable. For, besides that it was matter of horror to the counsellors, to find that they might be arraigned for every rash, every inconsiderate, every imperious expres-



sion or word, they had used there, (and so made them more engaged to servile applications,) it banished for ever all future freedom from that board and those persons, from whom his Majesty was to expect advice in his greatest streights; all men satisfying themselves, that they were no more obliged to deliver their opinions there freely, when they might be impeached in another place for so doing.”\*

The twenty-fifth article charged†, that Lord Art. 25. Strafford advised the King to go on vigorously in levying ship-money, and threatened to sue, in the star-chamber, the sheriffs of several counties, for not levying. It further charged, that when a loan of 100,000*l.* was demanded of the city of London, the Lord Mayor, Sheriffs, and Aldermen were by his advice sent for to the council-table, to give an account of their furthering the loan and ship-money, and required to certify the names of such as were fit to lend; and, on their refusing to comply, that Lord Strafford said, they deserved to be put to fine and ransom, and that no good would be done with them, till an example were made of them, and till they were laid by the heels, and some of the aldermen hanged up.

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\* Clar. Hist. I. 194.

† Rushw. p. 583.

The Lord Treasurer, Sir H. Vane, stated, that after the breaking up of the last Parliament, (that is, between May and November, 1640,) Lord Strafford advised, that they should go on vigorously and effectually with levying of ship-money.

A witness stated, that when the Aldermen were called to the council-table, Lord Strafford told them, respecting the ship-money, that they would never do their duties well, till they were put to fine and ransom; and added, "You shall have no good of this man, (by which, the witness supposed the Lord Mayor was meant), till he be laid by the heels."

Lord Berkshire stated, that on the Aldermen refusing to certify the names, as above mentioned, Lord Strafford said, that in his opinion they were liable to fine and ransom, for refusing to obey the King's command on this occasion.

Sir Henry Garaway, who had been Mayor of London in the preceding year, said, he had often been summoned with the sheriffs to attend the council, respecting ship-money and a loan from the city. He acquainted his Majesty with the difficulties, which had occurred in raising the ship-money; first, that many refused to pay, and those, who had paid, thought

it unequal and unjust, that they should pay while others went free : secondly, that it was the opinion of the city, that a writ for ship-money and a writ for Parliament did not well agree together. His speaking so freely and dealing so plainly were ill received by the King, and Lord Strafford addressed to the King these words, "Sir, you will never do good with this man, till you have made an example of him ; unless you commit him, you shall do no good." As to the money, to be raised by a loan, he informed his Majesty at the same time, that no good could be done ; for, among all the Aldermen, he could not prevail upon them to advance above 6 or 7,000*l.* at the most. That they declined to make out a list of the monied men, or to certify what every man was fit to lend. The witness said, he had himself presented the *six-cinq*, the *quatre-tres*, and the *deux-un* men, according to their qualities : but, as for setting a rate on men, this they must, with his Majesty's permission, be allowed to decline. Upon this, Lord Strafford burst out in the following expression, "Sir, you will never do good to these citizens of London, till you have made examples of some of the Aldermen." To the best of my recollection, said the witness,

the words were, "unless you hang up some of them, you will do no good upon them." This was the substance, the witness said, of what he had heard. "Can you speak this positively," asked Strafford. "It is a good while ago ; but I heard the words, that is certain." "Was I the person who spoke them," again asked Strafford. "Your Lordship did speak them."

Lord Strafford requested a short respite, assuring the Lords, that he would speak with as much truth, though not with so much confidence, as the worthy Mayor. He urged, in his defence, that, with regard to his advice in the affair of ship-money, he advised only what had been practised for three or four years before his return from Ireland ; and if it be an error, he was led into it by the practice of former times, and by the judgments of men wiser than himself. That a solemn judgment, declaring the legality of ship-money, had been delivered by the judges in the court of exchequer-chamber ; that it was not for him to dispute what had been done ; and he might be forgiven for not pretending to know more in other men's professions, than they knew themselves. That as for the words, imputing a menace of fine and ransom, he confessed he had



said, that, in his opinion, in a case of such urgent necessity and imminent danger, their refusal might perchance make them liable to fine and ransom ; that he had used this language to hasten and speed the Lord Mayor, not with any intent to hurt or prosecute him. He wished, that he had not uttered them, but now, as they had escaped him, he trusted they would not be charged against him as a crime ; and for such excess of speech, he hoped to be excused, if not pardoned.

Serjeant Maynard, in reply, laid great stress on Lord Strafford's advice in the business of ship-money. The judgment of the exchequer-chamber, said he, was against law ; none knew better than the accused himself, that the levying of ship-money was illegal, as he had taken a most active part in the Petition of Right : and his conduct, in advising such a measure, was the more unjustifiable, because he gave the advice, after the King himself had offered to abandon all claim to ship-money.

Lord Strafford, in not giving his denial to the charge of having advised the levying of ship-money, appears to have admitted the fact ; and this was one of the circumstances pressed most heavily against him. "The principal crime, objected against him," says Rush-

worth, "was his attempt to subvert that excellent law called the Petition of Right, which he himself (especially in a speech made by him in Parliament on 22nd March, 1627,) had promoted and pressed with the most ardent zeal, as the best inheritance he could leave to his posterity; and all the laws confirmed and renewed in that Petition of Right, were said to be the most invenomed arrows that gave him his mortal wound."\*

Art. 26.

The principal, and only charge of any importance, in the twenty-sixth article, was, that Lord Strafford, in the month of July, 1640, counselled His Majesty two dangerous and wicked projects, namely, to seize the bullion and money in the mint, and to debase the coin of the realm with the mixture of brass; and accordingly he procured 130,000*l.* in the mint to be seized to His Majesty's use†. But of this charge there was not the slightest proof, though some attempt was made to prove it.

Art. 27.

The twenty-seventh article charged‡, that the Earl of Strafford, being appointed Lieutenant General of all the King's forces in the North

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\* Rushw. Pref. p. 4.      † Rush. p. 590.

‡ Rush. p. 601.

against the Scots, did, by his own authority, and without any lawful warrant, impose a tax on his Majesty's subjects, in the city of York, for every soldier of the trained bands of that county ; which he caused to be levied by force. And, in order to compel obedience, that he threatened to commit all who refused to pay, and that the soldiers should be satisfied out of their estate.

The imposition of a tax for the support of the army was not traced by any distinct evidence to Lord Strafford. Even if there were ground for supposing him to have been in any manner concerned in imposing such a tax, it was certain, that he had acted in the business only as many other officers of the government, by the express command of the King, and in pursuance of the instructions of the council-board.

The twenty-eighth and last article was given up by the Committee. — Thus, at length, all these numerous and multifarious charges have been dispatched. Art. 28.

The case on the part of the prosecution was now closed, after having occupied fifteen days. On the following morning, the House of Lords was informed, by the Lieutenant of the Tower and an attendant of Lord Straf-

ford, that he was prevented from attending by sudden illness. In consequence of this, a conference was appointed between the two Houses, at which the Commons represented to the Lords the urgent necessities of the kingdom, the danger of delay, and the length of time already spent in the trial; and insisted, that it would be highly prejudicial to the country, if more time were to be consumed in the business. They concluded with requesting, that a day should be peremptorily fixed, for the hearing of Lord Strafford; and if he would not attend at the appointed time, that the Lords should proceed to hear the reply to the whole matter, and that the Earl should afterwards be excluded from saying any thing upon the facts of the case. This request was acceded to by the Lords, and the following morning was peremptorily fixed for Lord Strafford's defence.\*

On the following morning Lord Strafford attended to enter upon his defence. At this time, before he began, a remarkable occurrence took place, which is supposed to have had great influence on the fate of the accused. Pym produced and tendered in evidence a

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\* Parl. Hist. ii. p. 743.



written paper, in the hand-writing of Sir Henry Vane, the Secretary of State, purporting to be a memorandum of opinions delivered at the council-table, on May 5th, 1640, the day when the last Parliament was dissolved. This paper is said to have been discovered in the following manner :\*

Secretary Vane, being out of town, sent a letter to his son, Sir Henry Vane, then in London, with the key of his study, desiring his son to look in his cabinet for some papers which were there, and to send them to his father. The son, looking over many papers, among them lighted upon the notes, which, being of great concern to the publick, and declaring so much against the Earl of Strafford, he held himself bound in duty and conscience to discover. He showed them to Pym, who urged him, and prevailed upon him, that they might be made use of in evidence against the Earl of Strafford, as being most material and of great consequence with reference to that business. Accordingly they were now produced, and read in evidence.

The title of the notes was in these words, “ No danger of a war with Scotland, if offen-

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\* Whitelock Mem. p. 43.

sive not defensive." Then followed the opinions given at the council table\*.

K. C. (King Charles.) How can we undertake an offensive war, if we have no money?

L. L. I. (Lord Lieutenant of Ireland.) Borrow of the city 10,000*l*. Go on vigorously to levy ship-money. Your Majesty having tried the affection of your people, you are absolved, and loose from all rule of government, to do what power will admit. Your Majesty, having tried all ways, and being refused, shall be acquitted before God and man, and you have an army in Ireland, that you may employ to reduce this kingdom to obedience, for I am confident the Scots cannot hold out five months.

L. Arch. (Archbishop Laud.) You have tried all ways, and have always been denied; it is now lawful to take it by force.

L. Cott. (Lord Cottington.) Leagues abroad there may be made, for the defence of the kingdom. The Lower House are weary of the King and church. All ways shall be just to raise money by, in this inevitable necessity, and are to be used, being lawful.

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\* Parl. Hist. vol. ii. p. 745.

L. Arch. (Archbishop Laud.) For an offensive, not any defensive war.

L. L. I. (Lord Lieutenant of Ireland.) The town is full of Lords. Put the commission of array on foot, and if any of them stir, we will make them smart.

In answer to this paper, Lord Strafford urged\*, that it would be hard measure upon him, if he should be prosecuted, on a charge of high treason, for opinions and discourses delivered in a debate at the council-board. That as to the words, "the King had an army in Ireland to reduce this kingdom," he had before denied, and now again solemnly denied, that he had ever advised the King to employ the Irish army against England; and asserted, that there never had been any intention of landing the Irish army in England, as the Lords of the Council had already attested.

These notes of Sir Henry Vane, upon which so much stress was laid, and which are supposed to have produced a great effect on the fate of Lord Strafford, unquestionably ought not to have been admitted. They were not in the nature of original evidence; for the writer

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\* Parl. Hist. vol. ii. p. 746.

himself might have been called as a witness, to speak to the facts therein stated, and his testimony was the only primary and legitimate proof, which could be resorted to. Even if the notes could be looked upon as equivalent to the testimony of a sworn witness, they would still be objectionable on another ground, as a disclosure of the secrets of a cabinet-council, which, for reasons mentioned in a former page, ought to have been sacred and inviolable. Nor were they evidence *in confirmation* of the account given by Sir Henry Vane: he had given his evidence, independently of the notes, and without referring to them for confirmation or support. The only form, in which the paper could have been properly used at all, was as written *memoranda*, for the purpose of refreshing the memory of the writer, if his memory had required it; but, it is remarkable, that Sir Henry Vane did not refer to them during his examination, nor did he once mention that he had written the paper, or that he had such a paper in his possession.

Defence.

Lord Strafford, on the following day, rose to make his defence. He began by advert-  
ing to the situation in which he stood,—alone



and unsupported, opposed by the whole authority and power of the Commons, his health impaired, his memory fatigued, his thoughts unquiet and troubled; and he prayed the House to supply his many infirmities by their better abilities, better judgments, and better memories. "You alone," said he, "I acknowledge, with all gladness and humility, as my judges. The King condemns no man: the great operation of his sceptre is mercy: he dispenses justice by his ministers: but, with reverence be it spoken, he is not my judge, nor are the Commons my judges, in this case of life and death. To your judgment alone, my Lords, I submit myself in all cheerfulness. I have great cause to give thanks to God for this, and celebrated be the wisdom of our ancestors who have so ordained."

He argued with great force against the charge of treason, which had been pressed against him. There is a special difference, he said, between misdemeanors, felonies, and treasons; they are distinct offences: how is it possible, then, that any number of misdemeanors should make a felony, or a hundred felonies make one treason. The proof of any number of charges, which are not treasonable, cannot conduce to the proof of

treason. If there is no treason in any one part, how is it possible there can be treason in all the parts taken together. The accumulation of inferior offences cannot compose a different offence of a higher kind. The thing is impossible, and contrary both to law and reason. Even if all the offences, described in the articles, should be taken to amount to an endeavour to subvert the fundamental laws of the realm, (which was the treasonable charge specified in the articles, and pressed against him vehemently by the Commons,) even in that case, he argued, the offence would not amount to high treason. The statute of Edward III. is explicit and clear; many treasons are there described; but among them there is not to be found this, of endeavouring to subvert the fundamental laws. He had searched the statute book, he had inquired of the common law, but could find no such treason as this, either in the one or in the other. Such constructive and arbitrary treasons had long been strangers in the common-wealth: he trusted, they would still continue so, by the wisdom and justice of the House of Lords.

“Where,” said Lord Strafford, in conclusion, “where has this fire lain hid for so many centuries, that no smoke should appear, till

it burst forth now, to consume me and my children? Hard it is, extremely hard, that a punishment should precede the promulgation of a law. Better it were to live under no law at all, conforming, as best we may, to the will of an arbitrary master, than flatter ourselves with the thought of living under the protection of law, while at any moment we are liable to suffer for actions, which, at the time they were committed, that very law did not declare to be criminal. No man living could be safe, if that should be admitted. It is hard, that there is no mark set upon this offence, no sign by which we may know it, no warning by which we may avoid it. If I sail upon the Thames, and split my vessel on an anchor, where there is no buoy to give me warning, the party shall pay me damages; but if a buoy be set there, every man passes at his own peril. Where is the mark set upon this crime? where is the token, by which it could be discovered? If it be not marked, if it be concealed under water, no wisdom in man can rescue him from destruction. Let us abandon all forethought, and trust to some special interposition of providence; for this alone can preserve

us, if you condemn without notice, and punish without law.

“ For the sake of yourselves, my Lords, for the sake of the Peerage of England, suffer not yourselves to be misled by such strange constructions and subtleties of law. Expose not yourselves to such moot points. If there must be a trial of wits, at least let it not be, where your lives and honours are involved. We are told, that, in the primitive times, the first converts to christianity brought in their books of curious art, and destroyed them in the flames. And it will be your wisdom, to cast from you into the fire those bloody and mysterious volumes of constructive and arbitrary treasons, and to betake yourselves to the plain letter of the statute, which points out, where the crime is, and how you may avoid it. Seek not to be more learned than your fathers before you, in those killing and destructive arts.

“ It is now full two hundred and fifty years, since any man has been touched for this alleged crime, to this height, before myself. We have lived, my Lords, happily to ourselves at home—we have lived gloriously abroad to the world; let us be content with that which our fathers left us. Let us not



awake those sleeping lions, to our destruction, by raking up a few musty old records, which have lain by the wall for so many ages, forgotten or neglected.

“ My Lords, this troubles me extremely, lest it should be my misfortune (for my sins, not for my treasons), to be the means of introducing a precedent, so fatal to the laws of my country. I beseech you not to wound through me, the Commonwealth of England. The gentlemen at the bar, indeed, say, they speak for the Commonwealth; and, doubtless, they believe it true; yet, under favour, it is I, who, in this particular, speak for the Commonwealth. For the inconveniences and miseries, which must ensue on such a precedent, will be so great, that the kingdom must in a few years be reduced to the unhappy condition described in a statute of Henry IV.; men will not know what to do, or what to say.

“ Impose not, my Lords, such difficulties on ministers of state, that they can not serve their King and country with cheerfulness and security. If you weigh and measure them by grains and scruples, your strictness will be intolerable; the public affairs of the kingdom will lie waste, and no man will engage in them, who has honour and fortune to lose.

“ My Lords, I have now troubled your Lordships, — longer than I should have done, were it not for the interest of those dear pledges, which a saint in heaven left me. I should be loth, my Lords” — here his weeping stopped him. — “ What I forfeit myself, is nothing ; but that my indiscretion should extend to my posterity, wounds me to the very soul. You will be pleased to pardon my infirmity. Something I should have added, but am not able, — therefore let it pass.

“ And now, my Lords, for myself, I thank God I have been, by his good blessing towards me, taught, that the afflictions of this present life are not to be compared with that eternal weight of glory, which shall be revealed hereafter. And so, my Lords, even so, with all humility, and with all tranquillity of mind, I do submit myself clearly and freely to your judgment ; and whether that judgment shall be of life or death, *Te Deum laudamus, Te Dominum confitemur.*” \*

“ Certainly,” says Whitelock, “ never any man acted such a part on such a theatre with more wisdom, constancy and eloquence, with greater reason, judgment, and temper, than

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\* Rushw. 659. Whitelock, 44.

this great and excellent person; and he moved the hearts of all his auditors (some few excepted) to remorse and pity.”\* This testimony is the more striking and unexceptionable, as Whitelock was one of the Committee of Managers, who had the conduct of the prosecution. He must, indeed, be incapable of being touched by what is grand in the human character, (whatever may be his prepossessions respecting the individual,)—who can look with indifference on the spectacle here exhibited:—a great man, fallen in his fortunes, standing alone and unsupported, maintaining a contest, for many successive days, against the united force of such powerful enemies; not once surprised, or dismayed; seldom equalled in argument, always superior in temper, eloquence, and dignity.

Pym made a speech in reply to that of Lord Reply. Strafford; Glyn also spoke at great length.† They waived the consideration of all questions of law; as they were afterwards to be discussed by counsel. Their speeches abounded chiefly with general invective. They imputed to Lord Strafford all the dangerous practices, which had

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\* Whitelock, 44.

† Rushw. 661. 770.

been of late carried on against the peace and safety of the kingdom; the encouragement of papists, the increase of popery, the innovations in religion, the usurpations of the clergy, and the heavy taxation of the people. "We have passed through our evidence," said Pym, "and the result of all this is, that it remains clearly proved, that the Earl of Strafford has endeavoured by his words, actions, and counsels to subvert the fundamental laws of England and Ireland; and to introduce an arbitrary and tyrannical government." One extract may be given from the speech of Glyn, as a specimen of his style; which exhibits a striking contrast to the sustained dignity of Lord Strafford. "You have here," said Glyn at the close of his speech, "my Lord Strafford questioned for high treason, for going about to subvert the fundamental laws of both kingdoms; in defence whereof your noble ancestors spent their lives and bloods. My Lords, you are the sons of these fathers, and the same blood runs in your veins, that did in theirs; and I am confident, you will not think him fit to live, who goes about to destroy that which protects your lives, and preserves your estates and liberties. My Lords, you have the complaints of three king-



doms presented before you against this great person; whereby your Lordships perceive, that a great storm of distemper and destruction has been raised, which threatens the ruin and destruction of all. The Commons, with much pains and diligence, and to their great expence, have discovered the Jonas, that is the occasion of this tempest. They have discharged their consciences, as much as in them lay, to cast him out of the ship and allay this tempest. They expect and are confident, your Lordships will perfect the work, and that with expedition, lest, with the continuance of the storm, ship, tackling, and mariners, church and commonwealth, be ruined and destroyed.”

Before these judicial proceedings were concluded, another measure was set on foot, of a legislative kind, against Lord Strafford. A bill of attainder was brought forward in the House of Commons, on the same day on which the writing of Sir H. Vane was tendered in evidence; and was read on that day for the first time.\* Within four days afterwards it was read a second time.† On the following morning a conference took place between the two

Bill of At-  
tainer.

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\* Parl. Hist. vol. ii. 744.

† Rushw. 47.

houses ; at which the members, appointed to manage the business on the part of the Commons, represented to the Lords, that, as the evidence of facts had been given, it was proposed to proceed by way of bill, which would not in any manner interfere with, or oppose the other proceedings then in progress. At this conference the Lords would not finally resolve, how the trial should proceed. The Commons appear to have felt not a little resentment at this hesitation of the Upper House. They passed an unanimous resolution on the following day to this effect, — that it had been sufficiently proved, that Lord Strafford had endeavoured to subvert the ancient and fundamental laws of these realms of England and Ireland, and to introduce an arbitrary and tyrannical government against law.\* The day after this resolution of the House of Commons, Lord Strafford's counsel was allowed to argue the question of law, whether the charge, set forth in the articles of impeachment, amounted to the crime of treason ; being first strictly enjoined not to meddle with the *facts* of the case.† Lane argued on behalf

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\* Parl. Hist. vol. ii. 749. Rushw. 48.

† 3 Howell, St. Tr. 1472.

of Lord Strafford. The substance of his argument was, as follows :

Lane argued first, that Lord Strafford had not been guilty of treason, within the letter of the stat. of 25 Ed. 3. He had not conspired the death of the King : he had not levied war against the King ; he had not adhered to the King's enemies. He was not even charged with any such treason, in the articles of impeachment ; and such a crime had not been once alleged against him by his prosecutors. On the letter of the statute, therefore, he stood clear. Nor could his case be brought within this statute, by construction or inference. For the statute, being declaratory and penal, must be construed strictly, and to the very letter. In support of his argument, for a strict construction of the statute, he referred to an act of the 13th year of Eliz., which made the bringing over into this country bulls from Rome, to stir up mutiny and rebellion, punishable as treason ; whence he argued, that the offence was not treason antecedently to the passing of this act : and this was also an instance, to shew that the stat. of Edw. 3. had not been strained, and ought not to be strained beyond its letter, by construction.

Argument  
for Lord  
Strafford.

With regard to the main charge brought

against Lord Strafford, that of endeavouring to subvert the fundamental laws of the kingdom, he observed first, that one or more acts of injustice, whether maliciously or ignorantly done, could not, in any legal sense, be called a subversion of the fundamental laws; and then argued, that the offence, great as it unquestionably was, and deserving of a heavy punishment, could not be taken to amount to treason. For this he cited several decided cases. First, the case of the Duke of Suffolk, who was charged by the House of Commons with articles of high treason, in the 28th year of Hen. 6., for giving the King bad advice, for debasing the coin, for sassing men of war, for giving out summary decrees, for imposing taxes, for corrupting the fountain of justice, for persuading the King to unnecessary war, and giving up Anjou in France. On these charges, which nearly resembled those against Lord Strafford, he was tried for high treason, in having wronged the subject, and for subverting the fundamental laws of the kingdom, yet, after long consideration, the matter was found by the Lords in Parliament to imply only felony, and not treason. Secondly, he cited a case, in the 23d of Hen. 8.; where a person was tried for subvert-



ing the English laws, but not charged with treason. Thirdly, he referred to the case of one Larkes, who was charged with treason for subverting the law ; and it was adjudged not to be treason. It is to be observed, also, said Lane, that Lord Strafford is not charged with having actually subverted, but only with intending to subvert, the fundamental laws; now, though an intention to kill the King is treason, yet, in all other kinds of treason, the bare intent is not treason, and there must be action besides intention. An intent to levy war against the King, an intent to counterfeit the King's great seal or the King's money, are not treasonable ; nor can the intent to subvert the fundamental laws, if not carried into action, be construed to amount to treason, within the meaning of the statute of Edward. If, then, Lord Strafford is not guilty of treason, on the statute of Edw. 3. he is not guilty of treason at all ; for there is not any treason, which is not comprehended in that statute.

He then proceeded to argue upon the effect of the clause in the statute of treasons, which, it was supposed, would be pressed against Lord Strafford ; namely the proviso, that if, on a trial before a judge, a case, not specified in the statute, should be supposed to be treason, the

judge shall not give judgment of treason, till it is declared by the King and his Parliament, whether the case is treason or felony : and he submitted to the Lords, that, notwithstanding this clause, they could not justly declare him guilty of high treason. For, though in the time of Richard 2., several instances had occurred, of persons being adjudged by Parliament to be traitors, expressly under that proviso, and not for any treasons specified in the act, yet all such parliamentary adjudications had been afterwards annulled by a statute passed in the 1st year of Hen. 4., which provided that thenceforth treason should be judged not otherwise than was ordained by the statute of Edw. 3. ; and afterwards by the statute of 1st Mary, c. 1., treason was again reduced to the same standard. So that the salvo or proviso in the statute of Edw. 3. had been repealed, and the treasons, specified in that statute, were the only treasons, for which any person could be legally tried or condemned. \*

On the next day of meeting, the House of Commons unanimously resolved, that the endeavour of the Earl of Strafford to subvert the ancient and fundamental laws of the realm of

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\* Rushw. 671.

England and Ireland, and to introduce an arbitrary and tyrannical government against law in both these kingdoms, is high treason.\* Thus, having before settled the matter of fact, they now settled for themselves the matter of law. And on the second day after this resolution, the bill of attainder was carried through the House of Commons by a great majority; 204 members voting for it, 59 against it.† In these proceedings, by impeachment and bill of attainder, which went on together as concurrent acts, the Commons took upon themselves the parts both of judges and prosecutors; thus mixing and confounding functions opposed to each other, and utterly irreconcilable. [NOTE D.]

The question of law was argued by counsel against Lord Strafford, some days after Lane's argument, and not until the bill of attainder had passed through the House of Commons. The case was argued by St. John, at a conference held by the two Houses on the subject of the bill of attainder. Only a reduced plan of his argument is here attempted.

St. John stated, that the object of the House of Commons, in the conference, was to acquaint

Argument  
against  
Strafford.

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\* Rushw. 50. † Parl. Hist. vol. ii. 754. Rushw. 54.

the Lords with the reasons, which had induced them to pass the bill. The Commons, he said, did not intend to create a new treason by this bill for the condemnation of Lord Strafford, nor yet to decline the judgment of the Lords, as a court of justice; but they adopted this proceeding by bill, which had been in use for near two hundred years, in order to silence all doubts on the question of treason, if any such doubts should exist, and to husband time. Another great advantage in this mode of proceeding was, that it did not require any previous articles or charges; and though a single testimony, in a case of treason, might be sufficient to satisfy private consciences, yet it is not so clear, whether a single testimony would be satisfactory in a judicial way, where forms of law are insisted on; but in this proceeding by bill, private satisfaction to each man's conscience is sufficient, though no evidence at all were produced.

First, he argued, that Lord Strafford had committed high treason, as charged on the fifteenth article, by levying war against the King, within the meaning of the statute of Edw. 3. He admitted, that if forces are raised and employed on private ends, either of revenge or interest, it is not a levying



of war against the King. But, he insisted, that there may be a levying of war against the King within the statute, though not directed immediately against the person of the King, (for if not, this clause as to levying of war is superfluous and unnecessary, the case being provided for by a former clause, which makes it treason, to compass and imagine the death of the King;) and he argued, that it is a levying of war *against the King*, when it is intended for the alteration of the laws or government; because the King maintains and protects the laws, and he is the fountain whence they are all derived to the subject. In support of this proposition, he cited three adjudged cases: 1. A case, in the time of Richard 2., of a rebellion by the *villains* and lower people, *to establish the laws of villainage and servitude*, and burn all the records; which was adjudged to be treason. 2. The case of Grant and others, in the reign of Elizabeth, tried for an insurrection by apprentices *for setting prices on victuals*; which was also adjudged to be treason. 3. The case of Bradshaw and Burton, in the same reign, which was the case of a conspiracy to take up arms, *for throwing down all inclosures throughout England*, and adjudged to be an intending to levy war against the Queen, within the statute

13th of Eliz. c. 1. He referred also to the statute of 1 Mary, c. 12, which enacts, that if twelve or more shall endeavour by force to alter any of the laws or statutes of the kingdom, they shall be adjudged felons; which statute, he said, had lowered the offence, for it was treason before; but this was only a temporary act, and had expired. As to the acts which are sufficient to constitute a *levying of war*, he argued, that there need not be any marching in array, or displaying of banners, but that the arming and drawing of men together is sufficient; and cited Sir Thomas Talbot's case in the 17th year of Richard 2., where the men were armed in a warlike manner in assemblies.

To apply this reasoning to Lord Strafford's case. First, as to his design, that it was *against the King*: his design was to subvert the laws — for what was the use of laws, if he might order and determine of estates at his own pleasure? To effect this design, he assumed an arbitrary power over the lives, liberties, and estates of his Majesty's subjects, and determined causes upon paper petitions at his own will and pleasure; and he enforced obedience by the army. This was as bad, as to endeavour the overthrow

of the statute of labourers, the statute concerning wages, or the statute of Merton for inclosures. And as to the fact of *levying of war*, there was an army in Ireland at that time of 2000 horse and foot, and Lord Strafford, by his warrant, assigned over this whole army to Savile, for the purpose of executing the warrant : for the warrant gave him power to take, from time to time, as many soldiers as he should please, throughout the whole army. Soldiers, both horse and foot, with an officer, in warlike manner, were assessed upon the subject ; who killed their cattle, consumed and wasted their goods. This was an open act done, and a levying of war.

Secondly, he argued, that if Lord Strafford was not guilty of treason, by an actual levying of war, he had committed treason by *advising war, and declaring his intention of levying war* ; and such declared intent, if not within the clause as to levying of war, was, within the first mentioned clause, a compassing of the death of the King. 1. As to the *fact* of intention, it rested on the warrant given to Savile, and the advice of Lord Strafford, as stated in the twenty-third article. The warrant showed a resolution, to employ the whole army of Ireland to the oppression of His Majesty's

subjects, and for the overthrow of the laws. The advice to the King also, (“*You have an army in Ireland, which you may employ to reduce this kingdom.*”) showed the same intention, and was direct advice to levy war. The circumstance, that the advice was given to the King personally, he said, only served to aggravate the offence : it was offering poison to him, at the same time telling him, that it was a cordial. If advice is given against the people or against the laws, it is necessarily against the King; for they cannot be severed. 2. As to the matter of *law*, that such bare intent and advice would be treason, though nothing be done in execution of it, — he cited several cases, and a passage from Stamford; of which, the greater part did not apply, and some were most unsound in point of law.

The third proposition, which he argued, was this, — that even if there had not been an actual levying of war within the meaning of the statute, — even if counselling of war would not be treason within the statute, yet it fully appeared, by taking all his words, counsels, and actions together, that he was guilty of treason, within the first clause, in compassing and imagining the death of the King : *Si non prosunt singula, juncta juvant.* He cited Owen’s case, and



some other cases of the same description, to show, that words, denying the King's title to the Crown, or spoken for the purpose of withdrawing the affections of the people from the King, are of themselves, and without any thing done upon them, treasonable within the first clause of the statute. He insisted, that Lord Strafford's case was much stronger. For there were not mere words, but also counsels; not mere counsels, but also actions. Words not once spoken, but often; not in private, but in places most public; not spoken by a private person, but by a Counsellor of State, a Lord President, a Lord Deputy of Ireland. Here he enumerated the expressions, alleged to have been used by Lord Strafford at the council-table at York and in Ireland: and concluded thus, "We shall leave it to your judgment, whether these words, counsels, and actions would not have been sufficient evidence to have proved an indictment, drawn up against him like those before mentioned, and charging, that they were spoken and done with the intent to draw the heart of the King from the people, and the hearts of the people from the King, that the people might leave the King, and afterwards rise up against him to his destruction."

He then submitted to the House, that Lord Strafford, having sessed and laid soldiers upon the subjects of Ireland against their will, and at their charge, was guilty of treason by the Irish statute of 18 Hen. 6., (which has been before mentioned.) That the Parliament of England had cognizance of this statute, in the ordinary way of judicature. That even if there were not such jurisdiction in the ordinary course, yet the want of jurisdiction might justly be supplied by a bill.

This division of his argument, particularly that part of it relating to the point of jurisdiction, was much the most laboured. It contains a great deal of information on the ancient state of Ireland, and on the political relation subsisting between the two kingdoms in former times. But as the Irish statute of Hen. 6., and the charge of treason founded upon it, are not noticed in the bill of attainder, and appear not to have influenced, in any degree, the sentence against Lord Strafford, it would be tedious to go into such particulars.

He then proceeded to the main charge, of endeavouring by words, counsels, and actions to subvert the fundamental laws and government of the kingdom, and to introduce an arbitrary and tyrannical government. He

assumed, as a point too clear for argument, that such an offence was treason by the common law, and that it still continued to be treason, if there were any common-law treasons then existing. He argued, that the proviso in the statute of Edw. 3., and the whole scope of that statute manifestly show, that it was not the intention of the legislature to take away any treasons, that were such before the passing of that act, but only to regulate the jurisdiction and manner of the trial. Those treasonable acts, which were single and certain, (such as conspiring the King's death, levying of war, and the rest,) were left to the ordinary courts of justice; but with regard to the others, not depending upon single acts, but upon constructions and necessary inferences, it was thought too dangerous to give the inferior courts so great a latitude as to judge of these, and they were, therefore, reserved exclusively for the consideration of Parliament. He insisted, that this proviso had not been repealed by the statute 1 H. 4. c. 10. or 1 M. c. 1. before-mentioned. That the object of the legislature was not to put an end to common law-treasons by these statutes, but only to repeal all statute-treasons, and all treasons declared to be such by Parliament during the

period of time between Edward III. and Henry IV., and also during the period between Edward III. and Mary.

Lastly he argued, that if all the other grounds should be thought insufficient, and though Lord Strafford should not be adjudged to be guilty of treason on the statute of Edw. 3., yet that, even in this case, the legislative power would be properly exercised, and the bill of attainder might justly pass. For the offence, he said, was of the most aggravated description, far exceeding in guilt the treasons described in the statute of Edw. 3. ; dissolving all the arteries and ligaments of the state. Again, said he, the Parliament is the great body politic ; it has power over itself, and all its members ; it is the physician and the patient ; if one member be poisoned or gangrened, it has power to cut it off for the preservation of the rest. Shall it be said, if there is no law, there is no transgression ? He who would not allow others to have law, ought not to have any himself ; *lex talionis est*. It is true, we give law to hares and deer, because they are beasts of chace. But it was never accounted cruelty or foul play to knock foxes and wolves on the head, because these are beasts of prey. The warrener sets



traps for pole-cats and other vermin, for preservation of the warren.

‘ Lord Strafford had thought fit,’ said St. John, ‘ to conjure the House of Lords, not to be more skilful than their ancestors in the art of killing :’ he also, as the counsel for the Commons, would appeal to their ancestors, and call upon them to walk in their footsteps. He then “ raked up some old musty records, which had for centuries lain by the wall, neglected or forgotten,” and extracted from them some of the worst precedents of the worst periods in our history. 1. A case, in the time of Richard 2., of persons tried for surrendering two castles in France, and attainted by Parliament of high treason. 2. Another case, in the same reign, of a person attainted of treason by Parliament, for killing an ambassador, without malice, in self-defence. 3. Another case, in the same productive reign, of a judge (Tresilian) attainted of treason, for delivering opinions declared to be in subversion of law. 4. A case, in the reign of Henry IV., of a person attainted by Parliament for breaking prison, while confined on suspicion of treason. 5. A case, in the time of Henry VIII., of a person attainted of treason, and boiled by act of Parliament, for murdering by poison. And,

to close the list, he cited another case, in the same reign, the case of the Holy Maid of Kent, who was attainted of treason, for pretending a revelation from heaven, that the King would not preserve his crown, if he persisted in a separation from his Queen Katherine. "These attainders, he said, are still in force. They are precedents, which have been approved and confirmed by our ancestors, and deserve to be followed by their posterity. In all these attainders," said he, in conclusion, "there were crimes and offences against law; they thought it not unjust, circumstances considered, to heighten the degree of punishment, and that upon the first offender. We receive as just the other laws and statutes made by our ancestors; they are the rules, by which we guide ourselves in other cases: why should we differ from them in this alone, of attainder by bill."\*

Such were the arguments, which, as St. John declared, had induced the Commons to pass the bill of attainder. It was not without reason, that Lord Clarendon declared of this speech: — "the law and the humanity in it were equal, the one being more fal-

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\* Rushw. 675.

lacious, and the other more barbarous, than in any age had been vented in such an auditory.”\*

At the close of the argument, Lord Strafford begged, that his counsel might be allowed to speak again, as several of the topics had not been sufficiently noticed. † But this the Lords would not permit; a circumstance, most unfortunate for the accused, and for the ends of justice. For though Lord Strafford’s counsel is said to have spoken with the confidence of a man who believed himself, and undoubtedly, in point of law, had truth on his side; yet as he was obliged to begin, (which was not the regular course,) and could not anticipate all that was to be urged against him, the sophistries and bad precedents of St. John passed without an answer. Another disadvantage under which Lord Strafford’s counsel laboured, was his being rigidly restricted to the dry question of law, and not allowed to touch upon any facts of the case ‡; while the counsel on the other side was under no such restraint, and ranged at full liberty over the whole field of evidence.

While the bill was pending in the House of

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\* Clar. Hist. i. 232. † Rushw. 705. ‡ Rushw. 49.

Lords, the King entered the House, and taking his seat on the throne, commanded the attendance of the Commons. He then informed both Houses, that he could not in his conscience condemn Lord Strafford of high treason. He could not, he must acknowledge, clear him of misdemeanor. He did, indeed, think him unfit ever after to serve him or the Commonwealth, in any office or place of trust. But, he repeated, he could not in his conscience, condemn him of high treason. He would do much to satisfy his people ; but, in point of conscience, no fear, no respect whatsoever, should ever make him go against it. He trusted, therefore, they would take some course, not to press hard upon his conscience, and, at the same time, to satisfy the demand of justice.\*

From this time the popular party seemed resolved to carry their point by violence, and a system of intimidation now prevailed. Rumours of plots and treasons, against the people and the parliament, were set afloat, to terrify and inflame the minds of men : a coarse but destructive artifice, which was played off with great success against Lord Strafford,

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\* Parl. Hist. vol. ii. p. 754.



and still more fatally afterwards in the affair of the Popish plot. The people were excited by inflammatory libels, and even by factious addresses from many of the pulpits, which were in the possession of the Puritans. A multitude, to the amount of many thousands, thronged around the Parliament House, calling down vengeance on Strafford. The names of those who had voted against the bill of attainder were posted on the walls with the title of *Straffordians* and *Betrayers of their country*; a daring and scandalous breach of privilege, which was allowed to pass unnoticed by the House of Commons.\* The Peers represented to the Lower House, that they were encompassed by such a multitude of people, they could not be considered as free agents, and were hindered from dispatching the bill.† Even the Judges, who attended the House of Lords, were no less under the influence of the popular cry, than the Peers. For it is not credible, that they would have declared Lord Strafford guilty of treason by the law of the land‡, if they had not been intimidated by the exorbitant powers

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\* Parl. Hist. ii. p. 755. Rushw. 741. 744.

† Rushw. 742.

‡ Parl. Hist. ii. 742.

then exercised by the House of Commons.  
[NOTE E.]

At length, on the 7th of May, the Lords gave their consent to the bill of attainder.\* The Commons desired the Lords to apply to the King for his assent to the bill, as a measure necessary for the peace of the kingdom. The House of Lords complied with this request; and the King, in violation of his repeated and solemn promises, consented to the death of his ablest and most trusted minister, who had acted strictly in conformity with the royal instructions. The assent of the king, to the bill of attainder, was declared by commission, on the 10th of May. [NOTE F.] At the close of this day, after the bill had been passed, the Commons are said to have returned their humble thanks to the King, with assurances, that they would make him as glorious a potentate, and as rich a prince as any of his predecessors, if only he would still continue to take along with him the advice of his great council the Parliament, in the management of the affairs of the kingdom.†

The bill of attainder, which was now be-

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\* Rushw. 755. 26 Lords voted for the Bill, 19 against it.  
Parl. Hist. vol. ii. p. 757.

† Rushw. 756.

come an act of the legislature, recited, that the Earl of Strafford had been impeached by the Commons of England, for endeavouring to subvert the ancient and fundamental laws and government of the realm, and to introduce an arbitrary and tyrannical government against law; and for exercising a tyrannical and exorbitant power against the laws of the kingdom, and the liberties, lives, and estates of the King's subjects. It recited also, that Lord Strafford had (as charged in the fifteenth article,) commanded the laying and assessing of soldiers upon the King's subjects in Ireland against their consent, to compel them to obey his unlawful summons and orders, made upon paper petitions in causes between party and party, which accordingly was executed in a warlike manner upon divers of the King's subjects in Ireland; and that in so doing, he levied war against the King and his liege people in that kingdom. It recited further, that Lord Strafford, (as charged in the twenty-third article,) on the dissolution of the last Parliament, slandered the House of Commons to His Majesty, and counselled and advised His Majesty, that he was loose and absolved from the rules of government, and that he had an army in Ireland by which he might reduce

Bill of Attainder.

this kingdom; for which he deserved to undergo the pains and forfeitures of high treason. And lastly it recited, (what was charged in the twentieth article,) that he had been an incendiary of the wars between the two kingdoms of England and Scotland. All which offences had been sufficiently proved against the said Earl upon his impeachment. Then the bill enacted, that the Earl of Strafford, for the heinous crimes and offences aforesaid, be adjudged and attainted of high treason, and should suffer death, and incur the forfeiture of his estates.

Lord Strafford, being informed that the King had given his assent to the bill, addressed the following petition to the House of Peers \* : “Seeing it is the good will and pleasure of God, that your petitioner is now shortly to pay that debt, which we all owe to our frail nature—he shall in all christian patience and charity conform and submit himself to your justice, in a comfortable assurance of the great hope laid up for us in the mercy and merits of our Saviour, blessed for ever. Only he humbly craves to return your Lordships most humble thanks for your noble compassion to-

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\* Rushw. 756.



wards those innocent children, whom now with his last blessing he must commit to the protection of Almighty God ; beseeching your Lordships to finish his pious intentions towards them, and desiring that the reward thereof may be fulfilled in you by him, who is able to give above all that we are able to ask or think ; wherein, I trust, the honourable House of Commons will afford their christian assistance. And so, beseeching your Lordships charitably to forgive all his omissions and infirmities, he doth very heartily and truly recommend your Lordships to the mercies of our heavenly Father, and that in His goodness he may perfect you in every good work.”

On the day after the royal assent had been declared, the King wrote a letter to the House of Peers, which he sent by the Prince of Wales\* : “My Lords—I did yesterday satisfy the justice of the kingdom by passing the bill of attainder against the Earl of Strafford ; but mercy being as inherent and inseparable to a King as justice, I desire at this time in some measure to show that likewise, by suffering that unfortunate man to fulfil the natural course of his life in a close imprisonment ; yet

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\* Rush. 757.

so, if ever he make the least offer to escape, or offer directly or indirectly to meddle in any sort of public business, especially with me, either by message or letter, it shall cost him his life without further process. This, if it may be done without the discontentment of my people, will be an unspeakable contentment to me. To which end, as in the first place, I by this letter do earnestly desire your approbation, and, to endear it more, have chosen him to carry it, that of all your house is most dear to me; so, I desire, that by a conference you will endeavour to give the House of Commons contentment; assuring you, that the exercise of mercy is not more pleasing to me, than to see both houses of parliament consent for my sake, that I should moderate the severity of the law in so important a case. I will not say, that your complying with me in this my intended mercy, shall make me more willing, but certainly it will make me more cheerful, in granting your just grievances. But if no less than his life can satisfy my people, I must say, *Fiat justitia*. Thus again recommending the consideration of my intention to you, I rest, your unalterable and affectionate friend.—If he must die, it were charity to reprieve him till Saturday.”

This letter, written by the King, and delivered by the hand of the Prince, was twice read in the House of Lords, and, after serious and sad consideration, (as Rushworth writes,) the House resolved presently to send twelve of the Peers messengers to the King, humbly to signify, "That neither of the two intentions, expressed in the letter, could, with duty in them, or without danger to himself, his dearest consort the Queen, and all the young Princes, their children, possibly be advised."\* All which being done accordingly, (continues the same writer,) and the reasons shown to His Majesty, he suffered no more words to come from them; but, out of the fulness of his heart, to the observance of justice, and for the contentment of his people, told them, "That what he intended by his letter, was with an (*If*) *if it might be done without discontentment of his people*; if that cannot be, I say again, the same I writ, '*Fiat justitia.*' My other intention, proceeding out of charity, for a few days respite, was upon certain information, that his estate was so distracted, that it necessarily required some few days for settlement thereof." The Lords answered, that "Their purpose

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\* Rushw. 758.

was to be suitors to His Majesty, for favor to be shown to his innocent children ; and, if he himself had made any provision for them, that the same might hold." But the request, which the King had made, for a respite only from Tuesday till Saturday, was refused ; and the execution took place on the morning of Wednesday the 12th of May, 1641.

Execution.

A few incidents, which occurred before the execution, are related by Rushworth ; and as they are described by him with more simplicity and effect than by any other historian, the reader, it is hoped, will forgive their insertion in this place, in the words of that writer, although they add another page to this long narrative.

" The night before the day of execution (says Rushworth), Lord Strafford, having sent for the Lieutenant of the Tower, asked him whether it were possible he might speak with the Archbishop ? The Lieutenant told him, he might not do it, without orders from the Parliament. ' Master Lieutenant,' said Lord Strafford, ' you shall hear what passeth betwixt us ; it is not a time either for him to plot heresy, or for me to plot treason.' The Lieutenant answered, that he was limited, and, therefore,



desired his Lordship, that he would petition the Parliament for that favour. ‘No,’ said he, ‘I have gotten my dispatch from them, I will trouble them no more. I am now petitioning a higher court, where neither partiality can be expected, nor error feared. But, my Lord,’ said he, turning to the Primate of Ireland, who was present, ‘what I should have spoken to my Lord’s Grace of Canterbury, is this: You shall desire the Archbishop to lend me his prayers this night, and to give me his blessing when I go abroad to-morrow, and to be in his window, that by my last farewell, I may give him thanks for this and all other his former favours.’ The Primate having delivered the message without delay, the Archbishop replied, ‘that in conscience he was bound to the first, and in duty and obligation to the second, but he feared his weakness and passion would not lend him eyes to behold his last departure.’

“The next morning, at his coming forth, he drew near to the Archbishop’s lodgings, and said to the Lieutenant, ‘Though I do not see the Archbishop, give me leave, I pray you, to do my last observance towards his rooms.’ In the mean time, the Archbishop, advertised of his approach, came out to the

window; then the Earl, bowing himself to the ground, ‘My Lord,’ said he, ‘your prayers and your blessing.’ The Archbishop lifted up his hands, and bestowed both; but overcome with grief, fell to the ground *in animi deliquio*. The Earl, proceeding a little further, bowed the second time, saying, ‘Farewell, my Lord; God protect your innocence.’\*

“As Lord Strafford was marching to the scaffold, more like a general at the head of an army (as many of the spectators then said,) to breathe victory, than like a condemned man to undergo the sentence of death, the Lieutenant desired him to take a coach, for fear the people should rush in upon him and tear him in pieces. ‘No,’ said Lord Strafford, ‘Master Lieutenant, I dare look death in the face, and, I hope, the people too. Have you a care, that I do not escape, and I care not how I die, whether by the hand of the executioner, or the madness and fury of the people; if that may give them better content, it is all one to me.’”†

We are informed by the same writer, that in his progress to the scaffold, not a word of

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\* Rushw. 761. † Rushw. 762.

reproach was uttered against him by the immense crowd of people, who stood as close as they could, one by another, spread over the great hill, and were reckoned, in moderate computation, not to be less than a hundred thousand persons.\*

At the scaffold, he was attended by his brother and friends, who met him there to take the last farewell. He addressed them and the people in a speech, suitable to the solemn occasion. "His conscience," he said, "bore him witness, that, in all the honour he had to serve the King, he had not any intention in his heart, but what aimed at the just and individual prosperity of the King and his people, though it had been his ill fortune to be misconstrued. That so far from being against Parliaments, he had always thought Parliaments in England to be the happy constitution of the kingdom and nation, and the best means, under God, to make the King and his people happy." After expressing his wishes for the prosperity of the nation, he added, "I profess heartily my ap-

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\* Rushw. 773.

prehension, and do humbly recommend it to you, and wish that every man would lay his hand on his heart, and consider seriously, whether the beginning of the people's happiness should be written in letters of blood? I fear they are in a wrong way; I desire Almighty God, that no one drop of my blood rise up in judgment against them." He declared his attachment to the Protestant religion; took a solemn leave of his friends, and calling his brother, Sir George Wentworth, close to him, charged him with blessings and with a father's counsel for his eldest son and his daughters, "not forgetting," he added, "my little infant, that knows neither good nor evil, and cannot speak for itself; but God speak for it, and bless it. And now," said he, "I have nigh done. One stroke will make my wife husbandless, my dear children fatherless, my poor servants masterless, and separate me from my brother, and all my friends. But let God be, to you and to them, all in all." He then prepared for death, and taking off his doublet, said, "I thank God, I am no more afraid of death, nor daunted with discouragements arising from any fears; but do as cheerfully put off



my doublet at this time, as ever I did when I went to bed.”\*

“ Thus fell,” to use the words of his high-minded opponent, Whitelock, “ thus fell this noble Earl, who, for natural parts and abilities, for improvement of knowledge by experience in the greatest affairs, for wisdom, faithfulness and gallantry of mind, hath left few behind him that may be ranked equal with him.”†

The attainder of the Earl of Strafford was Reversal. reversed by Parliament, in the first year after the restoration. The bill of reversal recites ‡, that Lord Strafford was impeached, upon pretence of endeavouring to subvert the fundamental laws, and called to a public and solemn arraignment and trial before the Peers in Parliament, where he made a particular defence to every article objected against him ; insomuch that the turbulent party, then seeing no hopes to effect their unjust designs by any ordinary method of proceeding, did at last resolve to attempt his destruction and attainder, by an act of Parliament purposely made to condemn

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\* Rushw. 759. This writer says, he was present, and took down the words from Lord Strafford's mouth.

† Whit. Mem. p. 46. ‡ Rushw. 777.

him of accumulative treason, (none of the pretended treasons being treason apart, and so could not be in the whole, if they had been proved, as they were not,) and also adjudged him guilty of constructive treason, (that is, of levying war against the King,) though it was only the commanding an order of the council-board in Ireland to be executed by a serjeant-at-arms and three or four soldiers, which was the constant practice of the Deputies there for a long time. To which end, they having first presented a bill for this intent to the House of Commons, and finding there more opposition than they expected, they caused a multitude of tumultuous persons armed to come down to Westminster, with fury, to require speedy justice against Lord Strafford; and, having by these and other practices obtained that bill to pass the House of Commons, they caused the names of those resolute gentlemen, who, in a case of innocent blood, had freely discharged their consciences, to be posted up about the cities of London and Westminster, and styled them Straffordians and enemies to their country; and then they procured the said bill to be sent up to the House of Peers, where it having some time rested under great

deliberation, at last in a time when a great part of the Peers were absent by reason of the tumults, and many of those who were present protested against it, the said bill passed the House of Peers. The act then declared and enacted, that the bill of attainder should be repealed and reversed; and that all the proceedings in Parliament relating to the attainder should be cancelled, taken off the file, and obliterated, that they might not be visible in after ages, or brought into example to the prejudice of any person.

After such a lengthened narrative, it might be thought inexcusable to enter again into many details, or to detain the reader with any general discussion. It may be useful, however, to give a short summary of the principal blemishes and irregularities, which marked this trial. Instances have been pointed out, in which Lord Strafford was excluded from evidence, strictly legal and important for his defence: the loss of Sir George Ratcliffe's evidence, in particular, was a serious injury, as he had been intimately acquainted with all the measures and counsels of the Irish government. Other instances have been mentioned, in which incompetent and illegal evidence was admitted to his prejudice.

Of this kind, was the hearsay of some persons, said to be Lord Strafford's *echos* ; the notes and memoranda of Sir Henry Vane ; and the account of the consultations at the privy council. Lord Strafford was allowed a very scanty portion of time, in preparing himself for the trial ; and at last was forced into his defence, while suffering from severe indisposition. He had counsel assigned to him, in the usual and ordinary course, for arguing the question of law : but this availed him little, his counsel being compelled to begin, and not afterwards permitted to notice the arguments advanced on the part of the Commons.

These were inconsiderable and almost venial defects, compared with the injustice committed in other parts of the proceedings. The hurry and impatience of the Commons in pressing the Peers for their judgment, — their resorting to a bill of attainder at the close of the trial, as if for the purpose of securing their victim, — the heat and intemperance, with which they pressed forward that measure — their permitting, if not encouraging, a furious rabble to obstruct and intimidate the Lords, — their refusal, at last, of a respite of the execution even for three



days ; — these are proceedings which, betray an utter disregard of justice, and a strong feeling of animosity and revenge.

If the means, employed for the success of the bill, were unjust, the measure itself was not less to be reprobated. It will appear, on an examination of the charges, contained in the bill, that not any one of them was of a treasonable nature. The first in order, (which imputed to Lord Strafford a traitorous design to subvert the fundamental laws and government of the realm, and the exercising of a tyrannical and exorbitant power over the estates, lives, and liberties of the people,) it is perfectly clear, did not involve the crime of treason. The offence was not treason within the statute of Ed. III. ; this indeed seems to have been conceded by the counsel on the part of the Commons. Nor was the offence treason by the common law (though St. John attempted to maintain that argument) ; for when once the statute of Ed. III. had become, what it was designed to be, the only true standard and rule for the guidance of courts of justice, all common law-precedents for treason were annulled, and for ever extinguished.

Yet the conduct of Lord Strafford, consid-

ered with reference to this charge, though not treasonable, justly merited the censure of Parliament. On an impartial view of the evidence, and after making ample allowances for the difficulties of his situation, it will appear, that, in several instances, he abused the high powers entrusted to him, and was guilty of acts of oppression and misgovernment. His granting of some very arbitrary warrants, his treatment of the Earl of Cork, and his exaction of the oath against the covenant, furnish abundant proofs of his arbitrary temper. To these may be added, the advice which he gave to the King, to proceed vigorously in levying ship-money:—for though he attempted to justify his advice on the authority of a judgment in the Exchequer-chamber, in the case of Hampden, yet (to use the words of Lord Clarendon) it was well known, that “this cause was adjudged upon such grounds and reasons, that every stander-by was able to swear it was not law.”\*

But the most unjustifiable and most oppressive of all Lord Strafford’s acts, was his proceeding against Lord Mountnorris. This affair

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\* Clarendon, vol. i. 69.

admits of no defence, no excuse, no palliation. From the beginning to the end, it is marked with injustice, cruelty, and oppression. The subject-matter was not within the jurisdiction of a court-martial; the charge was of the most trifling description. The treatment of Lord Mountnorris, during the mockery of his trial, was harsh and unjust: the judgment was a sentence of death, when a slight reprimand (if the affair should have been noticed at all,) would have been amply sufficient; and although that sentence was not carried into effect, (which would have been murder,) the sufferings of Lord Mountnorris were severe. It is true, indeed, as Lord Strafford urged in his defence, that he did not sit himself as Judge on the court-martial, — it would have been a strange complication of injustice, if the same man had been at once party, prosecutor, and Judge, — yet he summoned the court-martial; he brought forward the charge; he knew every step, that was taken in the matter; and at last he sanctioned and approved the judgment. What gave this proceeding a worse colour, was the jealousy known to exist between Lord Strafford and Lord Mountnorris; “which,” says Lord Clarendon, “made it be looked upon as a pure act of revenge, and gave all men warning,

how they trusted themselves in the territories, where the Lord Deputy commanded." \*

In the instances here referred to, Lord Strafford appears to have been guilty of great oppression; and it would not be too much to assert, in the language of the first charge, that he exercised a tyrannical and exorbitant power over the people subject to his government. Even Hume, his professed advocate, is obliged to admit, that, in his conduct towards Lord Mountnorris, he was not a little debauched by the riot of absolute power and uncontrouled authority.† And it appears to be clear, that if he had been arraigned, not for treason, but for a high and aggravated misdemeanor, the proceeding would have been according to the regular course of justice, and conformable with the spirit of the constitution. But the conduct of the Commons, in waiving the lower offence, with which he would have been justly chargeable, for the purpose of taking away his life on a charge of high treason, of which he was innocent, was a violation of law and justice, which nothing can excuse.

The second charge in the bill of attainder

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\* Clarendon, vol. i. 221.    † Hume's Hist. vol. vi. ch. 54.



is, that Lord Strafford had by his own authority commanded the laying and assessing of soldiers upon His Majesty's subjects in Ireland against their consent, to compel them to obey his unlawful summons and orders, made upon paper petitions in causes between party and party; which was accordingly executed in a warlike manner, upon divers of His Majesty's subjects within the realm of Ireland; and, in so doing, did levy war against the King and his liege people in that kingdom. The statement in the bill of reversal, that this charge was not established by proof, is strictly correct. For although, in several instances, it was shown, that soldiers had been laid and assessed on houses and lands without the consent of the owners, yet this was not proved, in strictness of law and by competent legal evidence, to have been done in any one instance by the order or warrant of Lord Strafford; nor was it proved to have been done in any civil cause between private parties. If the military force had been employed, for the purpose of enforcing contribution-money, or to collect the King's rents, or to compel delinquents to appear and answer to a criminal charge, (and this might have been the case in the instances mentioned, — at least, the contrary was not

proved,) such a measure would have been in conformity with the long continued practice and usage of former governments in Ireland. But, waiving all discussion as to the matter of fact, it is clearer still, and most indisputably true, that the charge, even if strictly and fully proved, would not have been treasonable. The mere statement of the charge is a sufficient refutation. To represent the using of three or four soldiers, instead of so many bailiffs, as amounting to high treason,—in other words, to call the entering quietly into a house or land a *levying of war*; to convert the executing of process against a few individuals into warfare *against the liege people* of the realm; and, lastly, to denominate such a proceeding a levying of war *against the King*, (when, in truth, the act, complained of, had been done in the service of the King, by his most trusted minister of state, and for the very purpose of enforcing obedience to the laws and government of the King,)\* — all this is so unreasonable and so extravagant, that it requires only to be stated, in order to be at once exploded.

As to the next charge contained in the bill,

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\* See 1 Hale, P. C. p. 146, 147.

(which is, that Lord Strafford had advised the King, that he was loose and absolved from the rules of government, and that he had an army in Ireland, by which he might reduce this kingdom,) the true result of the evidence appears to be, that the words, here imputed to Lord Strafford, were not proved; and, even if they had been satisfactorily proved, it would surely be preposterous to maintain, that he was guilty of *treason*, however unconstitutional might have been the advice, or responsible the adviser. The last charge (which imputed to Lord Strafford, that he had been an incendiary of the wars between England and Scotland), was equally unfounded, both in matter of fact and in point of law.

A few words more, and the case is closed. It is impossible to deny, that Lord Strafford was cut off by an *ex post facto* law. According to the established law of the land, he was clearly innocent of the crime of treason; the expedient, therefore, of an act of parliament was resorted to, for the purpose of bringing him within the penalties of that offence. This was a palpable act of injustice, "a violation of the substantial rules of criminal proceedings."

[NOTE G.] It is difficult to imagine any justification for this retrospective proceeding,

which created a treason, and inflicted death, where the offence, at the time of its being committed, was only a misdemeanor. “Quo jure, quo more, quo exemplo legem nominatim de capite civis indemnati tulistis? Vetant leges sacratæ, vetant duodecim tabulæ, leges privis hominibus irrogari; id enim est privilegium. Nemo unquam tulit; nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit.”\* The plea of self-defence, which has been alleged by some writers in vindication of the Commons, — if, under any circumstances, such a plea can be admitted, to justify a state in putting a man to death upon an *ex post facto* law, — at least, in a case like the present, is without foundation. The safety of the state could not incur any danger from the existence of an individual, (if his life had been spared,) whose person was in the power of the Commons, and at their absolute disposal. Nor was any such plea ever urged by the Commons, who originated the measure, or by the Lords, who adopted it. The Commons knew their power too well, to fear the attempt of an individual, whom they had so completely

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\* Cicero, Pro Domo Suâ. 17.



overwhelmed. They acted from a principle of retaliation, and did not scruple to avow that unworthy motive. *Frustrà legem invocat, qui in legem committit*—was the sentiment addressed by St. John to the House of Lords. It is satisfactory to record, that there were some few, who at first supported the impeachment of Lord Strafford from motives of patriotism, and who afterwards withheld their consent from the bill of attainder, because they felt its injustice.

## NOTES.

## NOTE A. p. 95.

THE report of this trial, in Mr. Howell's collection, does not contain any part of the evidence. I have, therefore, used the report of the trial by Rushworth, which occupies a large folio volume of his historical collections; and, from this report, have made an abstract of all the evidence, which appeared to be material. The report of Rushworth seems to have been drawn up with the most exact care and scrupulous fidelity. I have also consulted and referred to the history of Lord Clarendon, Whitelock's Memorials, and the Parliamentary History.

## NOTE B. p. 98.

No trace of the latter part of this speech, against Lord Strafford, is to be found either in Rushworth, Whitelock, or the Parliamentary History. According to Rushworth, the course of proceeding in the House was this: After Pym's speech on the subject of grievances, Lord Digby moved, that a Select Committee should be appointed, to draw up such a remonstrance to the King, as should be a faithful and lively representation of the deplorable state of the kingdom, and such as might discover the pernicious authors of it;

and that the House should, with all speed, repair to the Lords with this remonstrance, and desire them to join in it. This motion was unanimously agreed to. On the second day after this, a motion was suddenly made by Pym, who declared, that he had something of importance to communicate to the House, and desired, that the doors of the House might be locked. This being done, he informed the House, that several persons had given information, which would be a good ground for accusing the Earl of Strafford of high treason. The House, upon this, appointed seven members to withdraw and consider the information; who immediately retired, to prepare a charge against the Earl. The Committee reported, that they found just cause to accuse the Earl of Strafford of high treason. See Rushworth's Coll. vol. iv. p. 32. 42.

## NOTE C. p. 163.

Lord Digby, in the speech which he delivered in the House of Commons against the bill of attainder, detailed the evidence, which had been given by Sir H. Vane in his examination, before the committee, previous to the trial.\*

“Mr. Secretary,” said Lord Digby, “was examined thrice upon oath at the preparatory committee. The first time, he was questioned to all the interrogatories, and to that part of the seventh, which concerns the army of Ireland. He said positively in these words, ‘I cannot charge him with that.’ But, for the rest, he desired time to recollect himself;

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\* Rushw. 51. Parl. Hist. vol. ii. p. 750.

which was granted him. Some days after, he was examined a second time, and then deposed these words concerning the King's being absolved from rules of government, and so forth, very clearly. But being prest to that part, concerning the Irish army, he said again, 'I can say nothing to that.' Here we thought we had done with him; till, divers weeks after, my Lord of Northumberland and all others of the junto denying to have heard any thing concerning those words, (of reducing *England* by the Irish army,) it was thought fit to examine the Secretary once more; and then he deposes these words to have been said by the Earl of Strafford to His Majesty, 'You have an army in *Ireland*, which you may employ here to reduce *this* kingdom.'"

There cannot be a doubt, that this representation of Sir H. Vane's evidence was correct; for its correctness does not appear to have been denied by Pym or the other members of the committee, though they must have had in their possession the original examination, with which Lord Digby's statement might have been easily compared. And if Sir H. Vane gave such evidence before the Committee of the House of Commons, we must conclude that his evidence before the House of Peers was designedly false.

NOTE D. p.195.

The Bill, on the third reading, was opposed by Lord Digby, who had taken a very active part against Lord Strafford during the impeachment. His speech, on that occasion, is preserved by Rushworth; and a few passages from it are worthy of notice.\* He

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\* Rushw. 50.



stated, in explanation of his own conduct, that he had been informed, that Lord Strafford would be proved to have advised the King to employ the army of *Ireland* for reducing *England*. "This," said Lord Digby, "I was assured, would be proved, before I gave my consent to his accusation. I was confirmed during the prosecution, and fortified in it most of all since Sir H. Vane's preparatory examination, by the assurances that worthy member Mr. Pym gave me, that his testimony would be made convincing by some notes of what passed at that junto concurrent with it; which I ever understanding to be of some other counsellor, you see now, prove but a copy of the same Secretary's notes, discovered and produced in the manner you have heard." Then he pointed out the great differences between the evidence, which Sir H. Vane gave before the Committee, and that which he gave before the House of Lords; which has been already mentioned in a former note. The following passages, at the conclusion of his speech, are impressive.

"God keep us from giving judgment of death on any man, and of ruin to his innocent posterity, on a law made *à posteriori*. Let the mark be set on the door where the plague is, and then let him, who will enter, die.

"Let every man lay his hand upon his heart, and sadly consider, what we are going to do with a truth; — either justice or murder. For, doubtless, he who commits murder with the sword of justice, heightens that crime to the utmost.

"The danger being so great, and the cause so doubtful, that I see the best lawyers in diametrical opposition concerning it, let every man clear his heart, as he does his eyes, when he would judge of a

nice and subtle object. The eye, if it be preinfect with any colour, is vitiated in its discerning. Let us take heed of a blood-shot eye in judgment.

“Let every man purge his heart clear of all passions. Away with personal animosities; away with all flatteries to the people, in being the sharper against him, because he is odious to them; away with all fears, lest by the sparing of his blood they may be incensed; away with all such considerations, as that it is not fit for a parliament, that one accused by it of treason should escape with life. Of all these corruptives of judgment, I do before God discharge myself, to the uttermost of my power; and do with a clear conscience wash my hands of this man’s blood, by this solemn protestation, that my vote goes not to the taking of the Earl of Strafford’s life.”—For this speech Lord Digby was sharply questioned by the House, and required to give an explanation.\* Such was the freedom of debate, in a case of life and death; and so natural was it for prosecutors to forget, that they were judges.

#### NOTE E. p. 210.

The proceedings, in the House of Commons, against the Judges, had taken place some months before this time. “On the 15th of December,” writes Whitelock, “the Commons voted, that a bill should be brought in, for fining the Judges for their opinions and judgment in the case of ship-money. Immediately afterwards, they proposed to impeach the

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\* Parl. Hist. vol. ii. 754. Clarendon, Hist. vol. i. 231.

Lord Keeper Finch, (who was the chief adviser for the levying of ship-money,) of high treason. On this occasion the Lord Keeper degraded himself, by declaring at the bar of the House of Commons, that "he would rather beg his bread from door to door, with *date obolum Belisario*, with their favor, than be never so high and honored, with their displeasure." It was a sad sight, (says Whitelock,) to see a person of his greatness, parts, and favor, to appear in such a posture before such an assembly to plead for his life and fortunes." The Lord Keeper was on the same day voted a traitor, for soliciting, persuading, and threatening the Judges to deliver their opinions for the levying of ship-money, and on other charges.

On the 13th of February, Sir Robert Berkley, one of the Judges of the King's Bench, who gave his opinion in favour of the levying of ship-money, was impeached by the Commons of high treason. By the command of the House of Lords, Maxwell, the Usher of the Black Rod, came to the King's Bench, where the Judges were sitting, took Judge Berkley off the bench, and carried him away to prison; "which," says Whitelock, "struck a great terror into the rest of his brethren then sitting in Westminster Hall, and in all his profession." Whitelock's Mem. 39, 40. This violent measure could not fail to make the Judges, who were before in the interest of the Crown, thenceforth subservient to the ruling party in the House of Commons; and the result would be equally fatal to the pure administration of justice.

## NOTE F. p. 210.

Whitelock gives the following account of the situation of the King at this time.

“The King being much perplexed upon the tendering of these two bills to him, (the bill for the continuance of Parliament, and the bill of attainder,) between the clamours of a discontented people, and an unsatisfied conscience; he took advice (as some reported,) of several of the bishops, and of others his intimate counsellors, what to do in this intricate affair; and that the major part of them urged to him the opinions of the Judges that this was treason, and the bill legal. They pressed likewise the votes of the Parliament; that he was but one man; that no other expedient would be found out to appease the enraged people, and that the consequences of a furious multitude would be very terrible. Upon all which they persuaded him to pass the bills. But the chief motive was said to be, a letter of the Earl of Strafford, wherein the gallant Earl takes notice of these things, and what is best for his Majesty in these straits, and to set his conscience at liberty. ‘He doth most humbly beseech him, for prevention of such mischief as may happen by his refusal to pass the bills, to remove him out of the way, towards that blessed agreement, which God (I trust,) shall for ever establish betwixt you and your subjects. Sir, my consent herein shall more acquit you to God, than all the world can besides. To a willing man there is no injury.’ If not [by] base betraying of their master by these passages, and by some private dealings, the King was persuaded to sign a commission to three Lords to pass these two bills; and that he should ever be brought to it, was admired



by most of his subjects, as well as by foreigners. Himself ingenuously acknowledgeth the grounds of doing this, and his error therein, in his excellent *Eikon Basil.*, chap. 5." Whitelock's Mem. p. 45.

Rushworth gives Lord Strafford's letter at length, p. 743; and mentions the passage in the *Eikon Basil.*, above referred to, as containing the reflections of the King. See p. 775.

NOTE G. p. 231.

Mr. Brodie in his History of the British Empire, and Mr. Godwin in his History of the Commonwealth of England, have defended the proceeding by bill of attainder. To their opinions is opposed the higher authority of Mr. Fox, who has avowed his opinion, that this proceeding "was a departure from the sacred principles of criminal justice." "It can rarely happen, (he proceeds to say,) that the mischief to be apprehended from suffering any criminal, however guilty, to escape, can be equal to that resulting from the violation of those rules, to which the innocent owe the security of all that is dear to them. If such cases have existed, they must have been in instances, when trial has been wholly out of the question, as in that of Cæsar and other tyrants. But when a man is once in the situation to be tried, and his person in the power of his accusers and his judges, he can no longer be formidable in that degree, which alone can justify (if any thing can,) the violation of the substantial rules of criminal proceedings." History of the Early Part of the Reign of James II., p. 10.



THE TRIAL  
OF  
HARRISON,  
ONE OF THE REGICIDES,  
AT THE OLD BAILEY,  
FOR  
HIGH TREASON.

12 Charles II. 1660.—5 *Howell*, 947. 1011.

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ONE of the first objects which engaged the attention of the Government after the Restoration, was the trial of those who had taken the most active part in the prosecution and murder of Charles the First. Forty-nine persons had been excepted by name from the act of general indemnity and pardon, as guilty of sentencing the King to death, or of signing the warrant for his execution, or as having been instrumental in taking away his life. [NOTE A.] The proceedings commenced on the 9th of October, 1660, when a bill was presented to the grand jury against thirty-two. On that occasion, Sir Orlando Bridg-

P. 988.

man, the Lord Chief Baron, [NOTE B.] addressed the grand jury in a speech of great length; in the course of which, he insisted much on the divine right of kings to rule their subjects, free from all responsibility; reprobated in the strongest terms the violent proceedings of the Long Parliament; and concluded with the following exhortation, well suited to the temper of the times, but unfit for a court of justice. "You are now to inquire of blood, of royal blood, of sacred blood; blood like that of the saints under the altar, crying, '*Quousque Domine.*' This blood cries for vengeance, and will not be appeased without a bloody sacrifice. He that conceals or favors the guilt of blood, wilfully and knowingly takes it upon himself; and we know, that from the time when the Jews said, 'let his blood be on us and on our seed,' it has continued on them and their posterity to this day.'" The jury immediately found a true bill, and the court adjourned to the next day, (the 10th of October,) when the trials commenced.

P. 996.

The indictment charged the prisoners with compassing and imagining the death of the late King. The overt acts of this treason, charged in the indictment, were, first, the



meeting and consulting together, and proposing to put the King to death ; secondly, their sitting together, and assuming an authority to put him to death ; thirdly, their sentencing the King to death.

These appear, from the summing up of the Lord Chief Baron, to have been the overt acts laid in the indictment. But it is probable, that the actual killing of the King was one of the overt acts charged against the prisoner : for the judges had resolved, previously to the trial, that this act of killing the King should be precisely charged, with all the circumstances attending it, as an overt act to prove the compassing of the King's death.\* This is a striking illustration of the difference between the overt act of treason, and the treason itself. The compassing and imagining of the King's death constitutes so essentially the crime of treason, that even the murder of the King could not be laid as the substantive treason, but only as the means employed, or the act done, in pursuance and prosecution of such compassing.

As the prisoners severed in their challenges, it was found necessary to try them separately.

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\* Kelyng's Rep. p. 8.

The first tried was Harrison, who had held a high command in the army in the time of the Commonwealth. The Solicitor-General, Sir Heneage Finch, opened the case on the part of the prosecution. He stated, that the scope of the indictment was for compassing the death of the King; that the rest of the indictment, such as, the usurping authority over the King's person, the assembling, sitting, judging, and killing of the King, were but so many overt acts, to prove the intention of the heart. "And if we can prove," said the Solicitor-General, "any other overt acts besides what is laid in the indictment, (as, the encouraging the soldiers to cry out for justice, or preaching to them to go on in this work as godly and religious, or any other act of all that catalogue of villainies, for which the story will be for ever infamous,) this may be given in evidence to prove the compassing and imagining of the King's death."

P. 1017. The evidence, produced against the prisoner was so clear and strong, that it could not leave a doubt of his guilt. Many witnesses proved, that he sat on the bench of the high court of justice, as one of the judges, for several days during the trial of the King; that he was on the bench on the 27th January,

1649, when the sentence of the court was passed for the execution ; and, while the sentence was read, he was observed to stand up with others of the judges, as giving his assent. It appeared also, that he had been one of a committee, appointed for the conducting of the impeachment ; and that, on one of their meetings, when it was proposed to contract the length of the charge, he advised the infamous expedient of blackening the King's character. At the same meeting, he gave an account of what had passed between himself and the King, in their way from Hurst Castle or Windsor to London : " The King," said Harrison, " was importunate to know, what we intended to do with him, and whether, or not, we intended to kill him?" to which he answered, that they had no such intention, but that the Lord had reserved him for a public example of justice.

It was further proved, that the prisoner P. 1020. had the command of a party, who conducted the King from Hurst Castle to London ; that when the King arrived at Bagshot, and was at dinner, the prisoner ordered guards to stand at every door of the room ; and that, on their way from Bagshot to Windsor, he

ordered several of his officers to ride close to the King, to prevent escape.

- P. 1021. A warrant was produced, which had been delivered to the witness by Scobell, the clerk of the House of Commons, in pursuance of an order of the House. The signature of the prisoner was proved by two witnesses, who had often seen him make his signature on other occasions; and the prisoner himself, at the trial, acknowledged his writing. The warrant was then read. It was a warrant for summoning a court, called the High Court of Justice, for the trial of the King. A warrant, also, for the execution of the King, was produced; and the prisoner avowed his signature in this, as in the other instance.
- P. 1022.

Some of the overt acts were proved by more than two witnesses. It would have been sufficient, if one witness had proved one overt act of traitorous compassing, and another witness had proved another overt act of the same species of treason. This was so resolved by the judges, at a conference previous to the trial.\* The same rule had been adopted on former occasions; and, after-

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\* See Kelyng, p. 9.



wards, was expressly sanctioned by a statute in the reign of William the Third.

The language and sentiments of the prisoner, when called upon for his defence, afford a striking instance of that mixture of fanaticism and hypocrisy, with which the character of those times was so strongly infected. He avowed, in a tone of triumph, that the deed had not been done in a corner ; that its sound had gone forth into many nations. He believed, the hearts of many had felt the terrors of that presence of God, which was with his servants in those days ; and they would bear witness, that the deed was not done in a corner. "Often," exclaimed he (in a strain, which had been before successfully employed by the leaders of his party,) "have I besought, with tears and supplications, the great Searcher of the human heart, to whom you and all kingdoms are less than a drop of water, to vouchsafe to me some conviction on my conscience ; and I have received assurances, and I firmly believe, heaven will, ere long, testify, that there was more of God than men suppose, in the marvellous acts which have been performed." After proceeding for some time in the same fana-

tical strain, he justified his conduct on the plea, that what had been done was done in the name of the Parliament of England, with the sanction of the supreme authority in the State, and therefore could not be questioned out of Parliament. He requested the Court to assign him counsel, for the purpose of arguing this question. But the counsel for the Crown insisted, that this which the prisoner had urged in his defence, was a new treason, and that counsel could not regularly be assigned. The Lord Chief

P. 1026. Baron said, "You pretend, indeed, the authority of Parliament; but, when you speak of it, you say the Commons alone. They were but one House of Parliament. The Parliament — what is that? It is the King, the Lords, and the Commons. I would fain know of you, where have you ever read, by the light which you say you have in your conscience, that the Commons of England were a Parliament of England, or that the Commons alone in Parliament used a legislative power? In what book have you read, that the Commons ever were the Parliament, or ever exercised alone the legislative power? We have been long enough cheated by names and words; there is not a colour for what you

say. To speak of this pretended power, and justify this power, is an aggravation, adding one treason to another. We shall tell you, that neither both Houses of Parliament, nor any single person or community, nor the people collectively or representatively, had any colour to have coercive power over their King. And this plea, which you have made, must be over-ruled." Harrison still maintained that the act which had been done, had been done by one estate of Parliament, and therefore could not be questioned in any other court. The other judges declared their opinion to the same effect as the Chief Baron. The Earl of Manchester called upon the judges "to go some other way to work." And one of the judges, (Justice Wild,) after remarking that the prisoner had confessed the fact, and that he forgot the barbarousness of his party, who would not hear the King in his defence, beseeched the Chief Baron to direct the jury for their verdict. The Court upon this over-ruled the plea, and asked the prisoner, whether he had any thing else to offer.

Harrison, upon this, insisted, "that notwithstanding the judgment of so many learned persons, that the kings of England were not accountable to the Parliament, yet the Lords

P. 1031.



and Commons, in the beginning of the war, had declared, that the war had been begun by the King; that the God of Gods —” upon which the Court interposed, observing, that such language would not be suffered. “I would not,” resumed the prisoner, “willingly speak to offend any man; but, I know, God is no respecter of persons. His setting up his standard against the people —” The Court again interposed, reminding him, that this could not be suffered, and that it did not relate to the business before the Court. The prisoner continued:—“I should have abhorred to have brought him to account, had not the blood of Englishmen, that had been shed —” This called up the counsel for the Crown, who said, the prisoner ought to be sent to Bedlam, till he should be taken to the gallows to render his account; that it was in a manner a new impeachment of the King, to justify their treasons against his late Majesty. The Solicitor-General prayed, that the jury might go together, to consider the evidence. Sir Edward Turner said, the prisoner had the plague all over him; that any, who stood near him, would be infected: “Let us say to him, as they used to write over an house infected, ‘The Lord have mercy



upon him,' and so let the officer take him away." The Lord Chief Baron declared again, the Court was ready to hear the prisoner, but that such language could not be suffered. "To extenuate your crimes, you may go on, but you must not go on as before." "I must not speak," said Harrison, "so as to be pleasing to men; but if I must not have liberty as an Englishman —" The Court exhorted him not to reflect thus; that he had more liberty, than any prisoner in his condition could expect; and that if he would only keep to the business, he might urge any thing in his defence. The prisoner again and again insisted, that what he had done had been by supreme authority; and appealed to the conscience of the Court, that they could not call it in question. "You have appealed to our consciences," said the Lord Chief Baron. "We shall do that, by the blessing of God, which shall be just; for which we shall answer before the tribunal of God."

The Lord Chief Baron then summed up the case to the jury. After stating that the prisoner was indicted for compassing, imagining, and contriving the death of the King, he proceeded thus, laying down the law with great accuracy, both with reference to the

charge, and with reference also to the facts of the case and the province of the jury. "In this indictment there are several things given but as evidence of the compassing his death; they are but the overt acts of it. The one is, first, that they did meet and consult together about the putting the King to death; and that alone, if nothing else had been proved in the case, was enough for you to find the indictment; for the imagination alone is treason by the law. But because the compassing and imagining the death of the King is secret in the heart, and no man knows it but God Almighty, it is not such as the law can take hold of, unless it appear by some overt acts. Then the first overt act is their meeting, consulting, and proposing to put the King to death. The second is more open; namely, their sitting together, and assuming an authority to put the King to death. The third is, sentencing the King. And I must tell you, that the proof of any one of these acts will prove the indictment. If you find him guilty of any one of them, either of the consulting, proposing, sitting, or sentencing, (though there is full proof for all,) yet notwithstanding you ought to find the indictment."

P. 1033.

The jury immediately found the prisoner

guilty. He died, avowing the same sentiments, expressed in language of still deeper and darker fanaticism. Bishop Burnet relates, that he went through all the horrible indignities and severities of his execution, (in which the letter of the law in cases of treason was punctually observed,) "with a calmness, or rather cheerfulness, that astonished the spectators."

The proof of the confinement of the person of the King, though not one of the overt acts laid in the indictment, appears to have been admitted, in conformity with a resolution of the judges, at a conference held previous to the trial. Their resolution was, in the following terms: "If any one overt act, tending to the compassing of the King's death, be laid in the indictment, any other overt act, which tends to the compassing of the King's death, may be given in evidence, together with that which is laid." \* Lord Hale also seems to have held the same doctrine: he says, "if any one of the overt acts, laid in the indictment, be proved, any other overt act, *of the same kind or species of treason*, though not laid, may be

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\* See Kelyng, p. 8. res. 5.

given in evidence, *to aggravate the crime, and make it more probable.*\* The proof of overt acts, not laid in the indictment, might, indeed, aggravate the charge to almost any extent; and, by encreasing the difficulty of the prisoner's defence, may be said to render the crime more probable. But, for this reason, such proof ought not to have been allowed. It is not consistent with the principles of justice, to bring forward at the trial, for the first time, without notice to the prisoner, any fresh charge entirely distinct from the charges contained in the indictment, and not in any manner tending to the proof of them.† The accused would thus be taken by surprise, and be unprepared for his defence. It is not surprising, that the judges, after adopting such a resolution, should proceed one step further, and declare, (as they did, within three years afterwards,) that, even if *none* of the overt acts, laid in the indictment, were proved, it would be sufficient to prove any other overt acts *of the same species of treason.*‡ These

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\* See 1 Hale, P.C. 121. † See Foster, Cr. L. 244. 246.

‡ See 1 Hale, P.C. 121.



harsh constructions in the law of treason were, in many instances, acted upon, to the great oppression of the subject ; till, at length, they were abolished by the statute of William III., which enacts, that no evidence shall be admitted of any overt act, that is not expressly laid in the indictment. \* The meaning of this clause is, that no overt act, which amounts to a *distinct independent charge*, can be proved, (even though it fall under the same head of treason, as that charged,) unless expressly laid in the indictment ; but still, it is to be observed, such overt acts may be given in evidence, though not laid in the indictment, as amount to direct proof of another overt act which is laid. †

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\* Stat. 7 W. 3. c. 3. s. 8. See Foster, Cr. L. 246.

† See Foster, p. 245. And see remarks on Sir Henry Vane's case, *ad finem*.

## NOTES.

## NOTE A, p. 343.

SEE stat. 12 Cha. 2. c. 11. s. 34. In addition to these forty-nine, the four following persons, all of them dead, namely, Cromwell, Ireton, Bradshaw, and Pride, were excepted; see sec. 37. Sir Harry Vane and Lambert, were excepted by another section from the general pardon; see sec. 42. Sir Heneage Finch, afterwards Lord Nottingham, opposed the clause against the four above-named, who were dead. See Parl. Deb. Aug. 22. 1660.

## NOTE B, p. 244.

Sir Orlando Bridgman was promoted from the Court of Exchequer to the Chief Justiceship of the Court of Common Pleas; and after the removal of Lord Clarendon in 1667, was appointed Lord Keeper. Bishop Burnet represents him to have been a man of great integrity, and a friend to toleration. In 1672 he was removed from office, for having refused to sign a declaration of the King for the suspension of all penal laws against the papists and non-conformists. He was succeeded by Lord Shaftesbury.

## NOTE C, p. 255.

Harrison is said by Lord Clarendon to have been the son of a butcher, and bred up a lawyer's clerk. On the breaking out of the rebellion, he entered into the parliamentary army, in which he rose gradually to the rank of captain; and, when that army was new-modelled, was advanced by Cromwell to a higher post. He had a capacity for business, with great enthusiasm; and it was this mixed character, which soon made him one of the usurper's favourite and most useful tools. Baxter, in his narrative of his own times, describes him as a man of excellent natural parts for oratory, who could pour himself out very fluently on the subject of religion, but was unsound and hollow in his religious principles, of a sanguine complexion, and ruined by his unbounded conceit and pride. See *Reliquiæ Baxterianæ*, p. 57.





THE TRIAL  
OF  
JOHN COOK,  
ONE OF THE REGICIDES,  
AT THE OLD BAILEY,  
FOR  
HIGH TREASON.

12 Ch. 2., 1660. — 5 *Howell*, 1078.

COOK, who had been appointed by the High Court of Justice to act as their Solicitor-General at the trial of Charles the First, was arraigned on the same indictment as Harrison. The substance of the evidence, against him, was as follows :

Previous to the trial of the King, on P.1080 January 20th, 1649, a committee of the High Court of Justice met, in the forenoon of that day, in the Painted Chamber. A person of the name of Price, was employed to write the charge against the King, which the prisoner was afterwards seen to take into his hands and peruse. The charge being prepared, the committee adjourned from the Painted Chamber to the Great Hall in West-

minster. On the sitting of the Court, the commissioners, appointed for trying the King, were called over by name ; and the pretended act or ordinance, which directed the trial of the King, was read. The prisoner then presented the impeachment against his Majesty. Upon this, Bradshaw, who officiated as Lord President, commanded, that the royal prisoner should be sent for. The King was led forth as a prisoner, and placed within a bar. Bradshaw addressed the King in the following words, " Charles Stuart, King of England ; the Commons of England, assembled in Parliament, having taken notice of the effusion of blood in the land, which is fixed on you as the author of it, and whereof you are guilty, have resolved to bring you to trial and judgment. For this cause, this tribunal is erected, and a charge is now to be exhibited against you by the Solicitor-General." He then called upon Cook, as Solicitor-General, to exhibit the charge ; and Cook presented an impeachment against the King, praying that it might be read. It was accordingly received, and read. Upon which, the King desired to speak, before he answered the charge. " For what cause," he said, " have you, my subjects, convened me here before you ? I see

no Lords around me. Where are the Lords of Parliament?" "Sir," answered Bradshaw, "you must attend to the business of the court. For that purpose are you brought hither; and you must give a positive answer to the charge." The King replied, that he had something to say, before he answered; and, after some difficulty, he was allowed to proceed. "I desire to know," said the King, "by what authority I am called to this place? This is the first question I shall ask." "By the authority of the Commons of England;" said Bradshaw; "the Commons assembled in Parliament, the supreme authority of the nation." "I do not acknowledge its authority; I am under a power, but not under lawful authority. You cannot judge the meanest subject of the land, much less me, your rightful King." Bradshaw here interrupted him, saying, he trifled away the time of the Court, and that they ought not to have their jurisdiction questioned. The prisoner at the bar several times demanded a positive answer from the King. The King often desired to be heard; and the prisoner as often interrupted him. At length the prisoner prayed the Court, that the charge, exhibited against his Majesty, should be taken *pro confesso*,

and earnestly pressed the Court for its judgment. Bradshaw declared, that if the King would not plead, they must record his contempt. Here the King, turning round to the people, said, "Remember, the King of England is not permitted to give his reasons in his own defence, and suffers for the liberty of his people." A great shout arose instantly from the people, who cried aloud, "God save the King." For four days successively, this mockery of justice was repeated. The King was daily brought before the Court, to plead to the charge; he constantly denied the jurisdiction of the Court, and the prisoner at the bar as often prayed for judgment. On the fourth day, he peremptorily demanded, in the name of the Commons of England, judgment on the King, as a traitor against the people.

These facts were proved by many witnesses. It was proved also by one witness, who had a conversation with the prisoner respecting the King's trial, only a day or two before the fatal sentence, that he declared, "the King must die, and monarchy must die with him." The written charge against the King was produced, and, after proof of the prisoner's signature, read. It was entitled, "The charge of the Commons of England, against Charles



Stuart, King of England, of high treason, and other crimes," exhibited to the High Court of Justice. The last clause in the charge was as follows: "And the said John Cook, by protestation, (saving, on the behalf of the people of England, the liberty of exhibiting, at any time hereafter, any other charge against the said Charles Stuart, and also of replying to the answers, which the said Charles Stuart shall make to the premises, or any of them, or to any other charge that shall be so exhibited,) doth for the said treasons and crimes, on the behalf of the said people of England, impeach the said Charles Stuart as a tyrant, traitor, murderer, public and implacable enemy to the Commonwealth of England, and prayeth, that the said Charles Stuart, King of England, may be put to answer all and every the premises; and that such proceedings, examinations, trials, sentences, and judgment may be hereupon had, as shall be agreeable to justice."

The prisoner made a long speech in his defence. He insisted, that he had not drawn up the charge against the King, that he acted only as counsellor, and only required the charge to be read, and demanded judgment against the King; and words, he said, would not

make treason. The Court resolved, that although a paper, containing treasonable matter, be drawn up by another, yet if it be known by the prisoner to contain such matter, and be delivered by him as a charge against the King to take away his life, this is an overt act to prove that he compassed the King's death, which is the treason charged in the indictment.\* After an able reply from Sir Heneage Finch, the Solicitor-General, and a very full summing up by the Chief Baron, Sir Orlando Bridgman, the jury found a verdict of guilty against the prisoner, who was afterwards executed.

No particular remark occurs on this case; which, however, it is useful to record, as throwing light on the other contemporaneous proceedings of the same kind, and which also affords an interesting sketch of one portion of the trial of the King.

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\* Kelyng, Rep. p. 12. n. 16.

THE TRIAL  
OF  
SIR HENRY VANE,  
AT THE KING'S BENCH,  
FOR  
HIGH TREASON.

14 Cha. 2., 1662. — 6 *Howell*, 119.

SIR Henry Vane, though he had not taken any part in the trial of Charles the First, was one of the persons excepted out of the general act of indemnity. \*

Long debates and many conferences between the two Houses of Parliament took place previously to the passing of that act. The House of Commons proposed to subject to capital punishments those alone who had been immediately concerned in the trial and execution of Charles I., at the same time not exempting other offenders from penalties and forfeitures. The King himself, in a speech addressed to the Lords on the subject of the act

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\* 12 Cha. II. c. 11. s. 42.

of indemnity, assured the House, that he never had entertained a thought of excepting any besides those immediately concerned in the murder of his father, and begged them not to exclude others from the benefit of the act. This mercy and indulgence, the King said, would be the best way to bring them to repentance, and the safest expedient to prevent future mischief. \* The House of Lords, however, urged the necessity of excluding others, and among them Sir Henry Vane and Lambert. In one of the conferences, the Lord Chancellor Hyde advised the exclusion of Vane, as a man of mischievous activity. † The Commons opposed this for some time. At length, after three conferences, they agreed to except him ; on a suggestion from the Lord Chancellor, that the two Houses should petition the King to spare his life. A petition of the two Houses was accordingly presented, praying the King, on behalf of Sir Henry Vane and Lambert, that, if they should be attainted, their execution might be remitted. ‡ The King received the petition, and granted the request ; but in what terms the answer was

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\* Parl. Deb. 1660, July 27.      † Ibid. 1660, Aug. 22.

‡ Ibid. Sept. 5.



expressed, we are not informed. \* Bishop Burnet says, the King gave a favourable answer, though in general words. It appears from the report of the trial, that Sir Henry Vane pleaded the royal promise in his defence, and the fact of such a promise was not denied by the counsel for the prosecution. †

The petition of the two Houses was presented in September, 1660; and Vane's trial did not come on, till nearly two years afterwards. What occurred in that interval to induce the King to alter his intention, — whether it was, that Sir Henry Vane had expressed his sentiments too freely on the state of public affairs, — or that the old feeling was revived against him, without any fresh cause of complaint, we are not informed by history. Hume writes, that the new Parliament, more zealous for monarchy than the Convention-parliament, applied to the King for his trial and condemnation. Bishop Burnet does not mention this circumstance, nor is any notice of it taken in the History of the Parliamentary Debates. It is certain, that

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\* See Report of the Petition, 6 Howell, 187.

† According to Keble's report of this case, the Attorney-General expressly admitted the promise; insisting only, that it could not be pleaded as a pardon.

Sir Henry Vane, at an early period, before the commencement of the rebellion, had given offence to the King and his Government, by taking an active part in the impeachments of Lord Strafford and Archbishop Laud; in having been the contriver and promoter of the solemn league and covenant; and by his rooted aversion to monarchy. His conduct also, during his trial, in justifying all his proceedings, and in maintaining the supreme authority of Parliament, was peculiarly offensive, and considered by the King as an unpardonable degree of insolence. [NOTE A.] But as such a line of conduct might have been anticipated from the well-known character of Sir Henry Vane, it is reasonable to conclude, that the Government, in bringing him to trial, had previously resolved not to spare his life, in case of a conviction.

The indictment charged him with compassing and imagining the death of Charles the Second, and conspiring to subvert the ancient frame of the kingly Government of the realm. The overt acts, laid in the indictment, were, that the prisoner, in concert with other traitors, assembled and consulted to destroy the King and the Government, and to exclude the King from the exercise of his royal authority;

and that he took upon himself the government of the forces of the nation by sea and land, and appointed officers to hold command in an army raised against the King; and for the purpose of effecting his design, did actually, in the county of Middlesex, levy war against the King.\* The indictment, at the prisoner's request, was read over to him twice, in English; he then desired, that it might be read over to him in Latin, but this was refused. After taking some objections to the indictment, which were considered immaterial, he pleaded not guilty. The court then adjourned for four days, at the end of which time the trial commenced.

The Attorney-General, Sir Geoffrey Palmer, [NOTE B.] stated the nature of the overt acts charged against the prisoner, and the particulars of the proofs. "We shall prove," he said, "that the prisoner sat with others in several councils or rather confederacies, encroached the government, levied forces, appointed officers, and at last levied open and actual war at the head of a regiment. And though he be chargeable for any

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\* Kelyng, Rep. p. 14.

crime of treason since the beginning of the late war, yet we shall confine the facts, of which we charge him, to the reign of his present Majesty."

P. 149.

The first piece of evidence, produced at the trial, was a warrant under the hand and seal of the prisoner, bearing date the 30th January, 1649, (the day of the death of Charles I.) directed to the officers of the navy, and commanding them to issue out stores for the service of the Government. The signature of the prisoner was proved by two witnesses acquainted with the general character of his hand-writing.

Several entries in the journals of the House of Commons were then read. One of them, dated the 1st February, 1649, purported to be an order for establishing a council of state. Another entry, of the date of 13th February in the same year, contained instructions to the council of state, requiring them to suppress the attempts of any, who should pretend title to the kingly government, from the late King, or from his son, or from any other person. The Attorney-General insisted, that the former part of these instructions showed an intent to destroy the person of the King; and that the latter part showed an intent to destroy the



kingly government. It appeared from another entry in the journals, of the 14th February, 1649, that the prisoner had been chosen a member of the Council of State, and had acted upon the instructions before-mentioned, and usually sat in the Council; and that he had also acted as treasurer of the navy. The fact of his sitting as member, in a committee of council, was also proved by witnesses. It was further proved, that in 1651 he was appointed president of the Council of State, and as such signed orders for military equipments. Another entry was read, dated 7th May, 1659, from which it appeared, that a committee of safety had been appointed for the care of the Commonwealth, and that the prisoner was one of its members, and as such had acted in conference with foreign ambassadors, and nominated officers to commands in the army, and had made several orders, and acted in various other ways in the service of the Commonwealth.

A witness of the name of Marsh proved, that P. 151.  
the prisoner proposed a new model of the Government, Whitelocke presiding in the chair; and that one of the particulars proposed, was the following: "That it is destructive to the people's liberty, (to which by God's blessing

they are restored,) to admit any earthly king, or single person, to the legislative or executive power over this nation." [NOTE C.] Another witness, Pury, stated, that he believed Sir Henry Vane had proposed this resolution to the chairman; and affirmed positively, that he gave reasons in its support. Wallis proved, that Sir Henry Vane had been at the head of a company of soldiers in Southwark.

Such was the substance of the evidence in support of the prosecution; from which it appears, that Sir Henry Vane transacted business in various public offices of trust, during the interval between the death of Charles I. and Cromwell's appointment to the protectorship; and further, that, after the deposition of Richard Cromwell, when a committee of safety was appointed, he acted as one of that committee. But it did not appear, that he had taken any part whatever in public business, from April 1653, (that is, about eight months before the election of the usurper,) until after the deposition of the usurper's son. The evidence, which weighed most against him, was probably the resolution, in which he joined, after Richard Cromwell had been deposed; when he was appointed, with four others, to consider of the best form of Go-

vernment. From this resolution it appears incontestable, that he was not only hostile to the restoration of the excluded family, but to the re-establishment of monarchy itself.

Sir Henry Vane was now called upon for his defence. He argued, first, in point of law, that the word *King*, in the statute of treasons, could only be understood to mean a *King regnant*, one in the actual possession of the crown; and not a King merely such *de jure*, who is not in possession of the throne: that the Parliament was the only power regnant at the time alleged; consequently, that no treason could be committed against the King. He was proceeding in this argument, when the Court observed, that, previous to entering into his defence in matters of law, it would be proper for him to call witnesses, if he had any. Upon this, he desired process of the Court to summon witnesses, and a further time to answer the charge; but the Court declared, that such a delay could not be allowed. He then suggested, that the warrant, purporting to bear his signature, but which was not stated by any witness to have been actually signed by him, had not been legally proved; that it might have been forged, and that he had good reason to believe it a forgery; and,

P. 152.  
Defence.

to prove this, he called two witnesses. He alleged also, that he had been chosen a member of the Council of State, without his consent or knowledge; and though he had afterwards acted in the council, such acts were done by him, in pursuance of the authority of Parliament, — a Parliament constituted in an extraordinary manner, — and dissoluble only by act of Parliament. He urged, that he was not the first mover in the actions charged against him; and if for such actions he were to be called in question by a King, who was out of possession at the time when they were done, it would be, to say the least, highly dangerous in its consequences. He objected, that, as the indictment charged him with high treason in the county of Middlesex, the proof of acts, done by him in Southwark, was not admissible. But upon the latter point the Court held, that any overt act, tending to prove the compassing of the death of the King, might be given in evidence, in whatever county that overt act had been committed.

P. 155.

The prisoner prayed the benefit of a bill of exceptions upon these points; but this the Court refused, being of opinion, that the statute of Westminster 2. chap. 31., which allows of bills of exceptions, does not apply to



a criminal case, but only to actions between party and party.\*

The main topic in his defence, and which he pressed with great force and ability, was the argument before alluded to, — namely, that what he had done, he did in the discharge of public duties, in offices of trust, under the authority of Parliament; at a time when the King was not in possession of the regal authority, and when the Parliament was the only power regnant. He adverted to the recent extraordinary changes and revolutions in the State, which had produced such a general confusion, that hardly any were able to know their duty, or decide with safety who were to command, who to obey. “All P. 150. things,” he said, “seemed to be reduced and resolved into their first elements and principles. But dark as the state of things might be, the law of England had not left the subject without some glimpse of light for his guidance. The legislature itself had taken care to provide, by a statute passed in the reign of Henry VII., during the contest of the two royal houses of York and Lancaster, that acts

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\* See 1 Levinz, 68. 1 Sid. 84.

and services, performed for a King *de facto*, should not be questioned by a King *de jure*. Miserable indeed would be the condition of the subject, if he should be compelled to submit to the Chief Magistrate, and afterwards for such forced obedience be arraigned as a traitor. I would gladly be informed," continued the prisoner, "what person there is in England, of estate and fortune, and of age, who hath not counselled, aided, or abetted, either by his person or estate, and submitted to the laws and government of the power that then was. If this be so, then, by your judgment upon me, you condemn the whole kingdom. I can truly affirm, that in the whole series of my actions, that which I have had in my eye, hath been to preserve the ancient well-constituted Government of England on its own basis and primitive rightful foundations. The usurpation of Cromwell I opposed from the beginning to the end, and to that degree of suffering and with that constancy, which well near had cost me not only the loss of my estate, but my very life. Therefore, I hope it will be evident to the consciences of the jury, that what I have done hath been upon principles of integrity, honour, justice, and reason."

P. 165.

P. 154.

The King's counsel now desired, that if the

prisoner had any witnesses, he might call them ; but that, when they once should come to reply, he must be silent. They said, they would admit, (if it could aid him,) that his actions had been in the name and by the authority of the Council of State, and that the actions of the Council of State had been by the authority of what he called a Parliament. "Then," replied the prisoner, "what I acted in the Council of State, and Committee of Safety, you will allow me. Now you must prove, that I ever acted in the other Council of State, after the Parliament was turned out." The King's counsel, upon this, produced a warrant, dated Nov. 3. 1659, sent by Sir Henry Vane, as treasurer of the navy, in pursuance of an order of the committee of safety. This warrant was for sending arms northwards after Lambert, who was gone to oppose General Monk. Sir Henry Vane then produced many officers of the regiment, which bore his name ; from whose evidence it appeared, that, about October 1659, when they had recourse to him, and frequently pressed him for orders, he bade them desist, and declared his dissatisfaction with their proceedings. Here he closed his defence.

The defence, which Sir Henry Vane made

for himself, displayed very considerable address and ability. One part alone of his speech was unworthy of him, — in which he pretended, that the warrants, given in evidence, had been forged, and that his election to the Council of State was without his knowledge and consent. He must have been sensible, that these assertions were without any foundation. There could not be a doubt, that the warrants bore his signature; and his whole conduct shows, that he approved and supported the appointment of the Council.

P. 155.

The arguments of Sir Henry Vane were unavailing. The Court held, that the Parliament was determined and dissolved by the death of Charles I.; that the proceedings, subsequent to that event, though conducted in the name of Parliament, were without any legal authority, and absolutely void; that Charles II. became King *de facto* as well as *de jure*, from the moment of his father's death; and that all acts, done with intent to exclude him from the exercise of his kingly office, were overt acts of high treason.

P. 156.

The Solicitor-General, Sir Heneage Finch, addressed the jury on the evidence; after which they withdrew, and returned with a verdict of guilty. By their verdict they found the prisoner guilty of high treason, from the



day of the King's death, (30th of January,) 1648-9.

On the fifth day after the trial, he was brought before the Court to receive the sentence of the law; and on being asked the usual question, whether he had any thing to say, why sentence of death should not be passed against him, he alleged as an exception, that he had not yet heard the indictment read in Latin. An argument ensued; and, at length, the King's counsel desired, that he might be satisfied upon this point. He then produced a bill of exceptions, which had been drawn out in form, and presented it to the Judges for their signatures. This they refused to sign, for the reason before given. Judgment of death was then delivered; and the execution took place within a few days after the sentence. P. 169.

Sir Henry Vane had prepared a long harangue, to be delivered from the scaffold to the surrounding multitude; but as he began to touch upon public affairs, his voice was overpowered by the noise of trumpets and drums placed beneath,—a barbarous expedient, which served only to excite in his behalf a much stronger interest and deeper feeling of compassion. No man, says Baxter, could die with greater appearance of gallant resolution and fearlessness, though he had been before P. 170.

thought timid: so that the manner of his death procured him more applause, than all the actions of his life. \*

The great question in this case, and on which Sir Henry Vane principally rested his defence, was, whether the statute in the 11th year of Henry VII. protected him from the penalties of treason, while he was discharging the duties of a public office, during the time of the commonwealth and the usurpation. That statute recites, in effect, that subjects are bound to serve their Prince and Sovereign Lord for the time being, and that it is against all law, reason, and good conscience, that by such service they should lose or forfeit any thing for doing their true duty and service of allegiance; then it enacts, that no person, attending upon the Sovereign of this land for the time being, and doing him true and faithful service of allegiance, shall for such deed be attainted of high treason or other offence; but shall be utterly discharged of all trouble or loss, for that his deed and service. Sir W. Blackstone, in commenting on this statute †, opposes, with good reason, the doctrine ad-

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\* Baxter's Narrative of his Own Times, Part 1. p. 76.

† 4 Comm. 77.

vanced by Mr. Serjeant Hawkins in his Pleas of the Crown, that we are bound by our allegiance to *resist* a King out of possession ; and observes, that the true distinction seems to be this, that the statute of Henry does by no means *command* any opposition to a King *de jure* ; but excuses the obedience paid to a King *de facto*. “ When, therefore,” says Blackstone, “ an usurper is in possession, the subject is *excused* and *justified* in obeying and giving him assistance ; otherwise, under an usurpation, no man could be safe, if the lawful Prince had a right to hang him for obedience to the powers in being, as the usurper would certainly do for disobedience. Nay, farther, as the mass of the people are imperfect judges of title, (of which, in all cases, possession is *primâ facie* evidence,) the law compels no man to yield obedience to that prince, whose right is, by want of possession, rendered uncertain and disputable, till Providence shall think fit to interpose in his favour, and decide the ambiguous claim : and, therefore, till he is entitled to such allegiance by possession, no treason can be committed against him.” Mr. Justice Foster takes the same view of the statute, and maintains, that when the throne is full, any person out of possession, but claim-

ing title, be his pretensions what they may, is no King within the statute of treason. "I am aware," he adds, "of the judgment of the Court of King's Bench in the case of *Sir Henry Vane*;" "That King Charles II., though kept out of the exercise of the kingly office, yet was still a King both *de facto* and *de jure*, and that all acts, done to the keeping him out, were high treason."\* The case of *Sir Henry Vane*, he then remarks, was a very singular case; and he concludes with these words, which are, in truth, conclusive on the question; "I will, therefore, say nothing on the merits of the question more than this, that the rule, laid down by the Court, involved in the guilt of treason every man in the kingdom, who had acted in a public situation under a Government, possessed *in fact* for twelve years together of sovereign power, but under various forms at different times, as the enthusiasm of the herd, or the ambition of their leaders, dictated." It is an historical fact, that Lord Chief Justice Hale, when of high rank at the bar, took the engagement, "to be true and faithful to the Commonwealth of England *with-*

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\* Foster, C. L. p. 402.



*out a King or House of Lords."* This, as Mr. Justice Foster remarks, was plainly, *in the sense of those who imposed it*, an engagement for abolishing kingly government, or at least for supporting the abolition of it; and, with regard to those who took it, it might, upon the principles of Sir Henry Vane's case, have been easily improved into an overt act of treason against King Charles II.

Hume observes, on this case, that, "the Court, considering more the general opinion of his active guilt in the beginning and prosecution of the civil wars, than the acts of treason charged against him, took advantage of the letter of the law, and brought him in guilty."\* How the Court could take advantage of the letter of the law, without considering the articles of treason charged, it is not easy to understand; since the articles, which form the charge, must be founded upon the words of the law. But the principal defect, in the passage referred to, is, that it represents the case of Sir Henry Vane as strictly within the letter of the law of treason: which is a most erroneous opinion; for there is scarcely any case, among the State Trials, so much out of

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\* Hume's Hist. of Cha. II. ch. 2. p. 63.

the strict and plain *letter* of the law; and, after the remarks of Mr. Justice Foster, which have been before mentioned, it will be thought not to be within the *spirit* or *principle* of the law.

Before closing this article, it may be convenient to collect the principal resolutions of the Judges, on the points of law which arose in the course of the trial, as they are reported by Kelyng, who was one of the counsel for the prosecution.\*

1. "By the death of King Charles I., the Long Parliament was actually dissolved; notwithstanding the acts of Parliament, [that is, the acts or ordinances, purporting to be acts of Parliament,] enacting, that it should not be dissolved except by consent of both Houses."

2. "It was resolved, that although King Charles II. was *de facto* kept out of the exercise of the kingly office, by traitors and rebels; yet he was King both *de facto* and *de jure*; and all the acts, which were done to the keeping him out, were high treason." The remark of Mr. Justice Foster, upon this resolution, has been before noticed.

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\* Kelyng's Rep. pp. 14, 15.

3. "It was resolved, that the very consultation, and advising together, on the means to destroy the King and his Government, was an overt act to prove the compassing on the King's death." This rule had been before settled in several cases.

4. "It was resolved, that the statute of Westminster, 13 Ed. I. c. 31., which gives the bill of exceptions, extends only to civil causes, and not to criminal."

5. "It was resolved, that, in this case, the treason laid in the indictment being the compassing of the King's death, (which was in the county of Middlesex,) and the levying of war being laid only as one of the overt acts to prove the compassing of the King's death; though this levying of war be laid in the indictment to be in Middlesex, yet a war, levied by him in Surry, might be given in evidence; for, being not laid as the treason, but only as the overt act to prove the compassing, it is a transitory thing, which may be proved in another county. But if an indictment be for levying war, and that be made the treason for which the party is indicted, in that case it is local, and must be laid in the county where in truth it was."

The rule, here laid down, is, that if the

treason, charged in the indictment, be the compassing of the death of the King, (which is one of the treasons specified in the statute of Edw. III.) and the levying of war is laid, as the overt act of such compassing, in the county in which the prisoner is tried, other overt acts of levying of war, besides those laid in the indictment, may be proved to have been committed in other counties, *being overt acts of the same species of treason*. On the authority of this and other cases, Mr. East, in his Treatise on the Pleas of the Crown, states the rule in the following terms: "After proof of an overt act in the county, in which the treason is laid, evidence may be given of any other overt acts *of the same species of treason* in other counties."\* Again, in another passage, thus: "If one overt act be proved by one witness in the county in which the trial is had, (which gives the grand jury jurisdiction to inquire,) another overt act *of the same species of treason*, proved by another witness in a different county, will make two

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\* East. P. C. 125. *ad fn.* citing Parkin's case, 4 St. Tr. 639. (13 Howell, 92.) and Layer's case, 6 St. Tr. 260. 319. (16 Howell, 164. 291.)



witnesses within the statute.”\* And there is no doubt, the reported language of the judges, in the cases cited by him, and in many other cases of a much more recent date, fully warrants these statements. Yet, on consideration, it appears to be clear, that the rule laid down in Sir Henry Vane’s case, and in most of the cases referred to, requires a very material limitation. The correct rule appears to be this, that any overt act of the prisoner, *tending to prove the overt act laid in the indictment*, may be given in evidence, whether committed in the same or in a different county. But if the overt act, proposed to be proved, is not itself laid in the indictment, *nor tends to prove any other overt act which is laid*, it ought not to be admitted in proof. Such is the principle laid down by Lord Chief Justice Holt in Rookwood’s case†, where the rule is much more correctly expressed, than either in Parkin’s case, or in Layer’s case. Lord Holt, in Rookwood’s case, commenting on the eighth section of the statute of W. III., (which enacts, that “no evidence shall be admitted or given

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\* East, P.C. 130, line 18, citing Layer’s case, and Gavan’s case, 2 St. Tr. 873. (7 Howell, p. 405, 406.)

† 13 Howell, 220.

of any overt act, that is not expressly laid in the indictment, against any person whatsoever," observes, that, "the act does not exclude such evidence *as is proper and fit to prove that overt act which is laid* in the indictment. Therefore, the question is, he adds, whether the giving of the list (that was the overt act not laid, to the proof of which an objection had been taken), does not prove some overt act that is laid in the indictment." It may be remarked, also, that, in Parkins's as well as in Laver's case, (although the language of the Court, as reported, is more extensive and general than the language of Lord Holt in Rookwood's case), yet the overt act, which had been committed in another county, and which was allowed to be proved, *did directly tend and contribute to the proof of the overt act laid in the indictment*.\* In the state trials of 1746, the rule, frequently laid down and acted upon, was, that acts of treason, *tending to prove the overt acts laid*, though done in a foreign county, might be given in evidence.† On the other hand, Vaughan's case

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\* See Foster, 245. The same remark applies to Damanaree's case, and Lord G. Gordon's case.

† Foster, 10.

clearly establishes the converse of the proposition; namely, that, unless the proposed evidence tend to the proof of some overt act laid in the indictment, it ought to be rejected.\*

These remarks may be not without their use in preventing error and misconception on a point of some importance. The difference between the two rules, here considered, is very great: the one, allowing proof of all overt acts, not laid in the indictment, provided only they are overt acts *of the same species of treason* as that described in the record; the other, admitting only such proof, as tends or contributes to prove some overt act which is charged. According to this latter rule, which appears to be the most correct, the prisoner is precisely in the same situation, on a trial for treason, as in any other criminal proceeding,—in which it is perfectly just, that any act done by him in any county, or in any part of the world, should be brought forward against him, to prove the specific charge on which he is tried, and of which charge he has had notice. But according to the other rule, overt acts, of a description the most irrelevant and extraneous,

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\* Foster, 246. See also Harrison's case, *supra*, p. 255. *ad fin.*

may be proved in any number and to any extent, subject only to this restriction, (if it can be called a restriction,) that they are not overt acts of a *different species* of treason. And when it is considered, that, although the *treason* is the *crime*, the *overt act* is the act *charged* to have been *done in prosecution* of the traitorous intent, and is, therefore, substantially the charge on which he is to be tried, it is plain, that if such evidence were to be admitted, the prisoner would be partly tried, and perhaps his conviction might in the result principally turn, on the proof of facts entirely unconnected with the specific act charged, and brought forward at the trial for the first time. In this manner the accused might be taken by surprize, and thus be without any means of defence. Such a course would be inconsistent with the principles observed in other criminal proceedings.



## NOTES.

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### NOTE A. p. 270.

SEE Baxter's narrative, part 1. page 76. See also a copy of an original letter, from the King to the Lord Chancellor, in Harris's life of Charles II. vol. 2. p. 34., and inserted in a note in Howell, p. 187. The letter is as follows: "The relation that has been made to me, of Sir Henry Vane's carriage yesterday in the Hall, is the occasion of this letter; which, if I am rightly informed, was so insolent, as to justify all he had done, acknowledging no supreme power in England but a Parliament; and many things to that purpose. You have had a true account of all: and if he has given new occasion to be hanged, certainly he is too dangerous a man to let live, if we can honestly put him out of the way. Think of this, and give me some account of it to-morrow: till when I have no more to say to you."

### NOTE B. p. 271.

Sir Geoffrey Palmer was the first Attorney-General after the Restoration. His character is drawn by Roger North in a better style, than is usual with that writer.

He was distinguished by his ability and mas-

terly knowledge in his profession, and his wisdom and generosity are said to have been incomparable. During all the troubles of the age, he lived quiet in the Temple, a professed and known cavalier; and no temptation of fear or profit could ever shake his principles. He had great business in conveyancing, and would not keep a clerk, who was not a strict cavalier. One of his clerks was said to be so rigid, that he would never write the word *Oliver* with a great *O*; and the Attorney-General himself was reported to have purchased the manor of *Charlton*, from its resemblance to the name of his royal master. Such peculiarities, observes his biographer, might be allowed to please and divert a zealous old cavalier, who had lived to see and enjoy the fruits of his honest ambition. When he was appointed to the office of Attorney-General, he had an opportunity of amassing great wealth, by the universal renewal of grants; but he was always mindful of his old friends; and generally, it is said, returned their fees. See Roger North's Examen.

NOTE C. p. 274.

Whitelock in his Memoirs, states, that on the 15th of December, 1659, the general council of the officers agreed upon seven articles, as follows:—

1. That there be no kingship.
2. No single person a chief magistrate,
3. That an army be continued.
4. No impositions upon commerce.
5. No House of Peers.
6. The legislative and executive powers to be in distinct hands.
7. Parliaments to be elected by the people.

On the following day, (he states,) the council of officers signified their opinion to the Com-

mittee of Safety, "that the best way to satisfy, and appease the present distractions, would be to have a Parliament forthwith summoned, without a King, or House of Peers." (See p. 690.) From a former passage in Whitelocke, it appears, that the Committee of Safety had appointed Vane, Fleetwood, Ludlow, and two others, a committee, to consider of a form of Government for the three nations, as a Commonwealth, and to present it to the Committee. (See p. 686.)

Baxter, whose narrative has been before referred to, gives the following account of Sir H. Vane:—

"Being chosen a Parliament-man, he was very active at first, for the bringing of delinquents to punishment. He was the principal man, that drove on the Parliament to go too high, and act too vehemently against the King. Being of very ready parts, and very great subtilty, and unwearied industry, he laboured, and not without success, to win others in Parliament, city and country, to his way. When the Earl of Strafford was accused, he got a paper out of his father's cabinet, (who was Secretary of State,) which was the chief means of Lord Strafford's condemnation. To most of our changes, he was that *within* the House, which Cromwell was *without*. His great zeal to drive all into war, and to the highest, and to cherish the Sectaries, especially in the army, made him above all men to be valued by that party."

"When Cromwell was dead, he got Sir Arthur Haselrigge to be his close adherent on civil accounts, and got the Rump set up again, and a Council of State, and got the power much into his own hands. When he was in the height of his power, he set upon

the forming of a new Commonwealth, and with some of his adherents drew up the model, which was for popular Government; but so, that men of his confidence must be the people." Baxter's Narrative, part 1., p. 75.



THE TRIAL  
OF  
MESSENGER, BEASLEY,  
AND OTHERS,  
AT THE OLD BAILEY,  
FOR  
HIGH TREASON,  
IN TUMULTUOUSLY ASSEMBLING THEMSELVES  
TOGETHER IN MOORFIELDS.

20 Charles II. 1668. — 6 *Howell*, 879.

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**T**HE title of this trial explains the origin and P. 879.  
nature of the prosecution. A rude multitude  
of persons, as the report states, met together  
in Moorfields, on an Easter Monday, which  
was the usual time of holydays for the city  
apprentices. [NOTE A.] They assembled in  
great numbers, raised a violent riot, and com-  
mitted many outrages; for which the ring-  
leaders were apprehended, and tried. The  
trials commenced within a very few days after  
the offence.

The prisoners above named, and thirteen  
others, were indicted for high treason, on four

separate indictments. One indictment was against Messenger, Beasley, Green, and Appletree; another against Cotton; a third against Bedle and Latimer; and a fourth against Limerick. The indictments were the same in all the cases. They stated, that the prisoners, with other persons to the number of five hundred, being armed in a warlike manner, with swords, half-pikes, halberts, and other arms, offensive and defensive, traitorously assembled themselves together, and levied war against the King.

The Chief Justice Kelyng, who presided at the trial, made a remark on the circumstance of there being four separate indictments. He informed the King's counsel, that they had not done well to make so many indictments, because by this means the King's evidence would be broken; whereas, if all the prisoners had been included in one indictment, the evidence, as to the main design, would have been entire against all; and then, said the Chief Justice, the assembling in several places, with the same intent, had made the matter more foul, and would have been aptly given in evidence against them all; and the several acts, which each of them did, would have come in better. Such a

remark as this would not be heard from the bench, in the present day. A Judge now holds the scale even and steady between the prosecutor and the prisoner; formerly, his first object was to promote the interests of the prosecution.

The first witness stated, that on Easter Tuesday he saw Beasley at the head of four or five hundred persons, with a sword in his hand, which the witness took from him; he had also colours,—a green apron upon a pole. Some of the people cried, “Down with the red coats.” They said Beasley was their captain. The witness and his party fell on them, and then they ran away. Green was with the multitude, as well as Beasley; but the witness did not see them go along with the people. P. 880.

The second witness said, that when the constable charged the people to disperse themselves, they knocked him down: that Apple-tree was the first, who struck the constable: that the constable and assistants drove the people up a lane: that the people cried, “Down with the brothels:” that Green shouted and threw up his hat. P. 881.

The third witness said only, that he saw Messenger come along with colours in his

hand, and that he took him and carried him to prison : that he heard the cry, of “ Down with the brothels :” and he saw two of the prisoners among them. “ Aye,” said the Lord Chief Justice Kelyng, “ aye, that was the captain and the ensign.”

The fourth witness gave this account : — “ I saw Beasley and Messenger in Moorfields pulling down houses on Monday, and on Tuesday, at the head of three hundred ; and at that time we routed them. On Wednesday they came with four or five hundred, and cried, ‘ Down with the red coats.’ ”

The last witness stated merely, that Beasley and Appletree were with about three hundred persons : that Beasley struck an ensign with his sword : that Appletree helped to pull down one house, and broke another.—This was the whole of the evidence on the part of the prosecution.

P. 882. The Lord Chief Justice Kelyng, then called on Beasley for his defence. “ Why did you gather this multitude together ? What reason had you for it ? ”

Pris. I do not know the reason.

L. C. Just. I speak to you, that you should give a reason. After all the trouble that we have



had in this nation, it is a sad thing that a great number of giddy-headed people must gather together *under pretence of reformation, to disturb the peace of the nation again*. If you can say no more for yourself, there will be but little trouble with you.

Serjt. Wild. What was the meaning of your gathering together ?

Pris. We went to pull down brothels.

L. C. Just. How did you know, which were brothels ? If you had known them, you might have indicted them ; there is a law against them ; but this is a strange kind of reformation, if a rabble come, and say this man is a Papist, and this keeps a brothel, and would pull it down. This is a mad reformation.

Pris. My Lord, that man has sworn, I was out on Tuesday : it was Wednesday before I came forth ; but staid at home with my wife, because I would not be among them.

L. C. Just. Did you not carry a green apron on a pole, for your colours ?

Pris. My Lord, as I passed along by the rout, they flung a bottle at me, and had like to have knocked me down, and tore my apron off, and charged me to carry it on a pole ; and I would fain have come away from them, and could not.

L. C. Just. Make this appear, that you would fain have got away, and that they did force you to do what you did, and I shall be glad of it.

Pris. There is none of them here now, that were there then.

L. C. Just. Then, all that you say is of little use; for it is no great thing to make a lie to save one's life.

Pris. God is my witness —

L. C. Just. Have a care what you say! — This effectually silenced the prisoner: and he spoke not another word.

P. 884. The Lord Chief Justice summed up the case to the jury. In the course of his speech he thus explained the law:—"By levying of war is not only meant, when a body is gathered together, as an army is; but, if a company of people will go about any public reformation, this is high treason; [as,] if it be to pull down inclosures; for they take upon them the regal authority; the way is worse than the thing. These people do pretend, their design was against brothels. Now, for men to go about to pull down houses, under the pretence of brothels, with a captain, and an ensign, and weapons,—if this thing be endured, who is

safe? It is high treason, because it doth betray the peace of the nation; for every subject is as much wronged as the King; for if every man may reform what he will, no man is safe. Therefore, this thing is of desperate consequence; we must make this for a public example: there is reason we should be very cautious; we are but newly delivered from rebellion, and we know that that rebellion first began under the pretence of religion and the law; for the devil hath always this vizard upon it. We know, that that rebellion began thus; therefore we have great reason to be very wary, that we fall not again into the same error; but it should be carried on with a watchful eye. And because apprentices, hereafter, shall not go on in this road, we will have the solemn resolution of all the Judges; and therefore you are to find it specially. You must find the matter of fact, and we will assemble all the judges together in a sober way, to give their judgment, whether it be high treason, or no: not, that we doubt of it now, (for we know it is high treason,) but for general satisfaction.

The jury, being dismissed to consider their verdict, after a short time returned, and gave a special verdict against Messenger, Apple-

P. 897.

tree, Beasley, and Green, as follows\* : — They find, that on the 24th of March last, a great number of persons, to the number mentioned in the indictment, were assembled together in East Smithfield and Moorfields, in the county of Middlesex, with arms mentioned in the indictment, on pretence of pulling down brothels ; that Beasley led them, and was called their captain, and had in his hand a naked sword, which he brandished over his head ; that Messenger had a piece of green apron on a staff, which he flourished as colours at the head of the company ; and that Beasley and he led the company as their leaders ; that they did the like on Wednesday the 25th of March, and were breaking down houses. That Peverell, one of the constables of Middlesex, having a constable's staff in his hand, came to them with other persons to aid him, and charged them to depart and keep the peace ; and thereupon Beasley with his sword struck him, and wounded him ; and several persons, assembled with him, struck him down

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\* The statement here inserted, is the report of the special verdict, as given by the Lord Chief Justice Keeling, who tried the case, in his Reports, p. 72. It differs in some few particulars, but not materially, from the report given in the State Trials.



and took away his constable's staff. That William Green was among them, casting up his cap, and hallooing, with a staff in his hand; and that, whilst he was among them, he was knocked down by a party of the King's soldiers, who came to suppress them, and was then taken. That Beasley struck at the ensign, who led the soldiers. That Appletree was among them on both days, and was the first that struck at Peverell the constable, and was among them at Burlingham's house on Saffron-hill, in the county of Middlesex, and pulled part of the house down, and the next house to it, and struck at one who admonished him to be quiet. And if, upon the whole matter, it shall seem to the Court, that they are guilty of the offence mentioned in the indictment, then they find them guilty.

All the judges met, in the following term, to consider this case. The Lord Chief Baron Hale delivered his opinion, that it was not a case of treason. "The reason, that made the doubt to him who doubted," says Sir Matthew Hale, in his Pleas of the Crown, speaking of himself, "was, first, because it seemed but an unruly company of apprentices, among whom that custom of pulling down

P. 899.

brothels had long obtained, and they were usually repressed by officers, not punished as traitors. Secondly, because the finding, to pull down brothels, might reasonably be intended two or three brothels, and the indefinite expression should not *in materiâ odiosâ* be construed either universally or generally. And thirdly, because the statute of 1 Mary, c. 12., though now discontinued, makes assemblies of above twelve persons, and of as high a nature, only felony, and [even] that not without a continuance together for an hour after proclamation made; as namely, an assembly to pull down brothels, burn mills, or to abate the rents of any manors, lands or tenements, or the price of victuals, corn or grain: or if any person shall ring a bell, beat a drum, or sound a trumpet, and thereby raise above the number of twelve for the purposes aforesaid, which are raised accordingly and do the fact, and dissolve not within an hour after proclamation, or that shall convey money, harness, artillery, it is enacted to be felony: and if any above the number of two, and under twelve, do practice with the force of arms unlawfully, and of their own authority, to kill any of the Queen's subjects, to dig up pales, throw down inclosures of parks, pull down any house, mill, or burn any stack

of corn, or abate rents of manors, lands or tenements, or price of corn or victuals, and do not depart within an hour after proclamation, and continue to attempt to do, or put in ure any of the things above-mentioned, they are to have a year's imprisonment." \*

But all the other judges answered, that this was the objection made by some judge in the case of Bradshaw and Burton, reported by Popham; † in which case, it was resolved, that if any persons assemble with force to alter the laws, or to set a price on victuals, or to lay violent hands on the magistrate (as, on the Mayor of London), and the like, and attempt with force to put the same in execution, this is rebellion and treason at the common law; and it was there resolved also, that the statute of 1st Mary must be understood to apply to cases, where persons to the number of twelve, or more, *pretending any or all of them to be injured in particular*, (as by reason of their common, or other interest in the land inclosed, and the like,) assemble to pull down inclosures forcibly, where they have an interest, or where in particular they are annoyed or grieved, and

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\* Hale, P. C. vol. i. p. 133.    † Poph. Rep. p. 122.

that such pulling down of inclosures is not treason. But, in case their act is to pull down inclosures *generally*, in which they are not particularly concerned, such act, if it be put in execution by force, is treason at common law. And it was agreed by all the judges, that the statute of 13 Eliz., which makes the *intention* in many instances treason, extends only to those cases, where the act, if done, had been treason by the common law. All the rest of the judges, therefore, unanimously agreed, that this rising with intent to pull down brothels *in general*, or to break open prisons *in general*, and let out the prisoners, and putting their intention in execution by force, is a levying of war against the King, and high treason, within the true meaning of the statute of 25 Edw. III. Besides the resolution in Popham's Reports, before cited, they considered the Case of the Apprentices, reported in the second part of Anderson's Reports, (pp. 4, 5.) where it was resolved, that, by the statute of 13 Eliz., if any intend to levy war for any thing, which the Queen by her laws and justice ought to do and reform in government as Queen, this shall be an intendment to levy war against the Queen, within that statute. And, they held,



that nothing can be treason, by the intention, within that statute, which had not been treason by common law, if it had been actually put in execution.

After coming to this general resolution, the P. 911. judges considered the particular cases, as they were found upon the several special verdicts; and it was agreed by all, except the Lord Chief Baron Hale, (who said he doubted on the main,) that as to Messenger and Beasley in the first verdict, and as to Cotton in the second special verdict, and as to Limerick in the fourth special verdict, the matter, as it was found against these four, was high treason in them all; and accordingly they had judgment, and were executed.

But, as to Appletree in the first special verdict, and as to Latimer in the third special verdict, there was a difference of opinion amongst the judges, whether the verdict was sufficiently found against them, to adjudge it high treason. For besides the Chief Baron, who was against all, the following judges, Atkins, Tyrell, Windham and Wylde held, that the verdict was not sufficient against those two, to warrant judgment of treason against them; because, they said, it was not expressly found, that they were aiding and assisting. But Lord

Chief Justice Kelyng, and the Judges Turner, Twisden, Archer, Raynsford and Moreton thought the verdict, as it was found against them, to be as full and plain as against any of the rest. For first, as to Appletree, the verdict first finds in general, that the number in the indictment were assembled, as in the indictment mentioned, with an intent to pull down brothels: that Beasley led them as their captain; that Messenger had a green apron upon a staff, which he flourished as colours; and then that Appletree, the person now in question, was amongst them on both the days, and was the first that struck at Peverell the constable, and was amongst them at Burlingham's house at Saffron-hill, and pulled part of that house down, and the next house to it, and struck at one that admonished him to be quiet; so that here, are several acts of force found to be actually committed by him in pursuance of their design; and then there is no need of finding him to be aiding and assisting; for that clause, they said, was only necessary to be found, where the jury find a person there among them, and find no particular act of force done by him; there, indeed, it is necessary for them to find, that he was present, aiding and assisting.

For the same reason, they held the ver-

dict to be full also against Latimer ; because it was first found, that the multitude was assembled, as mentioned in the indictment, on pretence of breaking prisons, and releasing prisoners, *in general* ; and then they find, that Latimer was amongst them, and active in breaking open the prison at Clerkenwell, (where prisoners, some for felony, and others, were let loose,) and that he was with the rest in the prison, after it was broken open, and so an act is fixed upon him. But as to Green, in the first special verdict, and Bedle in the third special verdict, they all agreed, that the verdict was not full enough as to them for judgment of treason ; because, the verdict only finds that they were present, and finds no particular act of force committed by them ; and does not find, that they were aiding and assisting to the rest ; and it is possible, one may be present amongst such a rabble, only out of curiosity to see : and whether they were aiding and assisting is matter of fact, which ought to be expressly found by the jury, and not to be left to the judges upon any colourable implication. Accordingly, these two prisoners were discharged.

This trial has been selected, not for any de- Remarks.  
gree of interest, which the facts of the case

can supply — for a state of facts more meagre and more uninteresting can scarcely be imagined, — but because it is one of the few reported cases, on which is founded the doctrine of a *constructive* or *interpretative* levying of war against the King. The terms, *constructive* and *interpretative*, were first used by Sir Matthew Hale, in commenting on the language of the statute of treasons; and it is partly from the misapprehension of those terms, partly from the very equivocal character of some of the instances usually cited in illustration of the doctrine, that the doctrine itself has been in some modern cases so strongly opposed. If, by the terms *constructive* or *interpretative* levying of war against the King, we are to understand such a levying of war, as the judges of our courts of law have construed and interpreted to be a levying against the King; there appears to be nothing harsh or strained in the application of those terms to the statute of treasons: nor has any thing more been done with regard to this statute, than is constantly and necessarily done by the judges, with regard to every other statute, and in every other part of our criminal law.

By the constitution of the country, the judges alone are competent, and to them it



exclusively belongs as their peculiar province, to put their construction and interpretation on the laws, which they are bound to administer. As in the case of burglary, there may be either an actual breaking of the dwelling-house, or what is called a *constructive* breaking, and it is the duty of the judge to declare, what amounts to a breaking, in construction of law : Or, on a trial for larceny, as it is the duty of the judge to declare what must be understood to be a taking or carrying away : so, in the case of high treason, the judges alone are competent to construe and interpret the statute ; they are to interpret the clause respecting the levying of war against the King, as well as the other clause respecting the compassing of the King's death ; and they alone are to determine, what are competent overt acts of these several heads of treason ; or, in other words, what acts are evidence, competent and fit for the consideration of the jury, to prove the compassing of the King's death, or to prove such levying of war.

The doctrine of *constructive or interpretative treason*, therefore,—if those terms are understood in their plain and natural import,—is not more open to objection, in point of principle, than the doctrine of constructive larceny or constructive burglary. And, on com-

parison, it will be found, that the constructions which have been adopted by our Courts, in the exposition of the statute of treason, (at least, from the period of the Revolution,) are much less strained, than the constructions put on most other branches of the criminal law.

In the interpretation of that clause of the statute, as to the levying of war against the King, — upon which clause this prosecution was founded, — there are two points, to be determined : First, what is a levying of war? Secondly, what is a levying against the King? The judges are to explain and to define the meaning of both parts of the clause : the jury are to decide, whether the case, as proved by the witnesses, comes within the scope of such judicial definition. Even the words, *levying of war*, plain and simple as they are, require some explanation, lest they should be taken as descriptive only of the martial array of a hostile army, or as meaning to express the carrying on of military operations, as they are usually carried on by one nation against another.

But the principal discussion, on the statute of treasons, has arisen upon the other part of the clause ; namely, what is a levying of war *against the King* ? In the first place, it is evident, that the words of the statute must not be understood

to mean only such a levying, as is directed immediately against the *person* of the King, though perhaps that is their strict and literal import. Such a construction would be too narrow, and render the clause almost inoperative. A levying of war against the *forces* of the King, or against the *government* of the King, or for the purpose of overthrowing or altering the established constitution of the church or the state, — of which the King is the head — all these, in just reasoning, and on the soundest construction, must be considered as much a levying of war against the King, as if they were levelled directly against the royal person. And, with full as much reason, a rebellion or insurrection, (which terms may be used as synonymous with the words in the statute, *levying of war*,) for the purpose of constraining and compelling the King to alter his measures of government, or for the purpose of removing by force his counsellors from their place and attendance on the King, have been justly considered by the ablest judges of the best times, a levying of war *against the King*; for they are an attack upon the King in his regal capacity; they are levelled at the regal dignity; and they necessarily tend to the overthrow of the

King's authority, and to the destruction of the government of the country.\* An insurrection, with intent to compel, by acts of force and violence, the legislature to repeal a law, has also been justly placed on the same level with the insurrections above described, and is a levying of war against the King.†

Another class of cases, (to which the case, now under discussion, has been thought to belong,) is that, where the insurrection has been for some *general, national object, subversive of the government of the country*, though not immediately and directly against the government as its declared object.‡ This, it is conceived, is the principle, on which rebellions, having a general purpose in view, are adjudged to be within the clause now under consideration. To fall within this clause,

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\* See Foster, Cr. L. 210. 1 East, P. C. 72. 1 Hale, P. C. 131.

† See Lord Mansfield's summing up in Lord G. Gordon's case. 21 Howell, p. 644.

‡ The following are the cases upon this subject : Case of the Labourers, 3 Inst. p. 10. 1 Hale, 133. Case of the Apprentices, 2 Anderson, pp. 4 & 5. Bradshaw and Burton's case, Popham, 122. 1 Hale, P. C. 145. Bensed's case, Cro. Car. 583. 1 Hale, P. C. 140. The Weavers' case, 1 Hale, 142. Dammaree's case, 15 Howell. On this subject, see Luders's Considerations on the Law of Treason.



the rebellion must be for a public, general, national object, and an attack on the constituted government and authority of the realm. Of this treasonable character are all rebellions to destroy the distinctions of rank and property — rebellions for the purpose of exterminating the trade and manufactories of the country — rebellions for the purpose of altering the established law, or to change the established religion.

There are other instances, to exemplify the same principle, frequently mentioned in our books, but of a much more equivocal and less decided character; such as, insurrections or rebellions, in order to throw down *all* inclosures, to enhance the price of *all* labour, or to open *all* prisons.\* These, it must be remembered, are instances, not perhaps very happily selected, but still only instances, to illustrate the principle before-mentioned; they are not the principle itself, though they have often been so represented in argument, with a view to disparage the doctrine of a *constructive* levying of war. And these instances are of no use whatever, except for the purposes of illustration; for it is not

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\* Foster, Cr. L. p. 211.

possible, that a rebellion should hereafter occur, agreeing exactly, in every point, with any recorded precedent of treason. "All risings," (says Mr. Justice Foster, laying down the principle, after referring to particular instances,) "in order to effect these innovations, of a *public and general concern, by an armed force*, are, in construction of law, high treason within the clause of levying war: for though they are not levelled at the person of the King, they are against *his regal majesty*: and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and an armed force." \* But an insurrection with intent to throw down *all* inclosures in a *particular place or county*, to pull down *all* brothels in a *particular town*, or to remove a *local nuisance*, is not such an insurrection as amounts to a levying of war. "If the assembly," says Mr. Justice Foster, "be upon account of some *private quarrel*, or to take revenge on some particular persons, the statute of treasons has already determined that question in favour of the subject." \* Again,

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\* Foster, Cr. L. p. 209.

“Risings to destroy *particular inclosures*, or to remove *nuisances*, which affected or were thought to affect in point of interest the parties assembled for these purposes, have not been held to amount to levying of war within the statute.”\* These rules, so laid down by Mr. Justice Foster, as the result of adjudged cases, and laid down by him more unexceptionably than by any other writer, have been invariably adopted by his successors on the bench, and are the settled and well-established law of the land.

With full as much consideration, and with as great authority, the law has been laid down to the same effect, in one of the latest State Trials, in a comment upon the clause relating to levying of war. “Those offences only are to be considered as treason, which relate in some way to the King and his regal majesty ; private quarrels and private objects are declared not to be treason : it has, ever since the passing of this statute, uniformly been held, that, where the object is *public and national*, *where the attack is against the constituted government and authority of the realm*, of

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\* Foster, Cr. L. p. 210.

which the King is the head and chief, that is high treason against the King, within the meaning of this act.”\*

The case, now before the reader, though it is not noticed by Mr. Justice Foster, must be considered as coming within the class of cases last mentioned. It is, perhaps, of all the cases, the weakest in its circumstances — for there was not the slightest proof of a conspiracy or agreement to rise, or of any preconcerted plan, or of any previous notice, or of any arrangement or concert in the operations of the multitude, or of arms (excepting a single sword), or of seditious language, or of any kind of menace against the government. For this reason, perhaps, the case may have been disregarded by Mr. Justice Foster, who was considering the general and ruling principle, to be deduced from all the cases together, and not the facts of any one particular case. [NOTE B.] And, here, it may be proper to suggest, that when this case is examined with reference to the general principle and rule of law, the facts must be col-

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\* See the Summing-up in the trial of Ludlam, reported by Gurney, p. 297. 32 Howell, p. 1273.



lected from the special verdict, on which the Judges delivered their judgement ; but when it is examined with reference to the propriety of the verdict, the facts must be taken, not from the special verdict, but from the evidence stated in the report : for the special verdict, it must be remembered, is not a faithful representation of the facts proved at the trial. It was not true, as stated in the special verdict, that the great number of persons, assembled together, were armed with arms, as mentioned in the indictment, that is, with swords, halberts, halfpikes, and other arms, offensive and defensive : the witnesses spoke only of a single sword in the hands of Beasley. Neither was it true, — at least, according to the report, the witnesses did not prove the fact, — that Beasley brandished a naked sword over his head, or that he flourished colours at the head of the party. And the fact, of the rioters running away, as soon as some of the other party fell upon them, is wholly suppressed.

But taking the rule as settled, namely, that insurrections in order to open *all* prisons, or throw down *all* inclosures, or pull down *all* brothels, are levying of war against the King, it is always for the jury, and for the jury

alone, to determine, whether such was the real intent and design of the rioters. Upon that issue depends the question, whether the case amounts to treason. "The true criterion in all these cases," says Mr. Justice Foster, "is, *Quo animo* did the parties assemble?" The intent or design of the rioters is a plain matter of *fact*, to be determined upon the evidence, and to be determined by the jury alone. In the case, therefore, now under consideration, it would have been proper, and was indispensably requisite, to direct the jury to consider, whether those who joined in the insurrection had a design to pull down *all* brothels, *generally through the kingdom*, with a view to carry into effect a general and national purpose; — or whether, on the other hand, their intent was of a more limited and partial nature; as, for instance, to remove what they might think a local nuisance, or perhaps to commit indiscriminate acts of violence. In other words, the jury would have to consider, whether the transaction was a temporary and sudden ebullition of a prevailing spirit of tumult, violence, and disorder, — which would be a case of riot; or whether it was an attack, aimed against the regal authority of the realm, — which would be a case of treason. Such,

it is conceived, was the course, proper to have been adopted on this trial : such has been the practice approved by Judges of the highest authority in modern times.\*

If the case had been so presented to the jury, they would have had to determine, — considering, on one side of the question, the number of persons assembled ; the pulling down of some houses (it did not appear how many) ; the cry at one time, “ Down with the red coats ; ” at another time the cry of “ Down with the brothels ; ” the fact of one of the party having a sword ; and the other fact of a green apron upon a pole, used as colours ; — taking into account also, on the other side of the question, the circumstance, that there was no proof of any preparation previous to the insurrection, or of any previous meeting, or of any plan, or of any kind of conspiracy ; no proof of any general arming of the party, or of any weapon, offensive or defensive (with the exception of the

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\* The reader is particularly referred to the summing up in Watson's case, 32 Howell, 581 ; to the summing up also in Brandreth's case, 32 Howell, p. 928, 929 ; to the summing up in Turner's case, 32 Howell, p. 1131 ; and to that in Ludlam's case, 32 Howell, p. 1273.

single sword), and no proof of any seditious or treasonable language used by the mob, — considering all these circumstances, on the one side and on the other, the jury would have had to determine, if the case had been properly laid before them, whether the party, so assembled, had a design to effect such a general and national purpose, as the pulling down of *all* brothels, — not only those in the vicinity of Moorfields, but *all the brothels, universally through the kingdom at large*, — and whether the shout of the mob was referable to such a settled and general design : (to use the words of Mr. Justice Foster) whether this was “a rising to effect an innovation of a public and general concern by an armed force ;” \* or, (to use the words of Lord Ellenborough) whether it was “a temporary ebullition of a prevailing spirit of tumult, violence, and disorder.”† The case, however, was not so submitted to the consideration of the jury. The Chief Justice Scroggs did not once allude to the *intent* or *design* of the multitude ; the jury do not appear to have taken this into

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\* Foster’s Cr. L. p. 211.

† See the summing up in Watson’s case, vol. ii. of Gurney’s Report, p. 431., and 32 Howell, p. 581.



their consideration, and have not noticed it in their special verdict. Not to advert to the dangerous hint, given by the Chief Justice to the jury, "to make this case a public example,"—which assumed guilt, and anticipated the sentence, — not to notice his allusions to the recent rebellion, (which could scarcely fail of alarming or exciting the minds of the jury,) — this trial appears to have been defective in the essential point above-mentioned. Strictly speaking, it can scarcely be denominated a *trial*; since there was no investigation of that leading fact, (relative to the *intent* or *design* of the multitude,) which was the true and only criterion of the guilt of the prisoners.

## NOTES.

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NOTE A. p. 297.

THE outrages, described in this trial, (which are a striking proof of the disorderly habits of the labouring classes, and of the ill-regulated state of the police,) were not unfrequent in the earlier periods of our history. The reader will find this subject noticed in the account of the Travels of Cosmo the Third, in England, 1669, lately published, p. 296, 297. "So great is the number of apprentices, that in order to prevent the inconveniencies which might arise, the government of the city finds it necessary, by a particular provision, to oblige the heads of the houses in every street, to keep on foot a certain number of men armed with spears, at the head of the street, by way of preventing the insolence of the apprentices on the days, in which their freedom is allowed them, which are at the Easter and Whitsuntide holydays, and some others, according to the custom of the city; for, meeting to the number of 10,000, (and they are supposed to amount to that number and more,) they divide themselves into separate parties, and spread over the different quarters of the city, meditating, and frequently accomplishing, the annoyance of the public, as it may suit their fancy; taking confidence from their numbers, and from the cudgels which they hold in their hands, (the carrying

any other weapon being prohibited); and this they push to such an extent, that it frequently happens, that the authority of the Lord Mayor has not been able to restrain their headstrong rashness; and even towards this magistrate, they have not unfrequently failed in proper respect, and have treated him with contempt and derision." — In the second volume of Ellis's Original Letters, a letter is preserved, from Sergeant Fleetwood to Lord Burghley, giving an account of an insurrection of apprentices in London in the year 1586.

## NOTE B. p. 320.

Mr. Justice Foster mentions the case of the *Apprentices*, or, as it is sometimes called, the *Weavers' case*, (reported in Anderson, part i. p. 4., and stated also in Hale, P.C. vol. i. p. 142,) and declares his opinion, that it did not amount to levying of war against the King. He says, "Upon the same principle, and within the same equity of the statute, I think it was very rightly holden by five of the Judges, that a rising of the weavers in and about London *to destroy all engine-looms*, did not amount to levying of war within the statute, though great outrages were committed on that occasion, not only in London, but in the adjacent counties, and the magistrates and peace officers were resisted and assailed. For those Judges considered the whole affair merely as a private quarrel between men of the same trade, about the use of a particular engine, which those concerned in the rising thought detrimental to them. Five of the Judges, indeed, were of a different opinion; but the Attorney-General thought proper to proceed against the defendants, as for a riot only. (Foster's Cr. L. p. 210.)

The case of the Weavers, briefly mentioned by Foster, is stated more fully by Sir Matthew Hale: "A great number of weavers, in and about London, being offended at the engine-looms, (because thereby one man could do as much in a day, as nearly twenty men without them,) after attempts in Parliament and elsewhere to suppress them, did agree among themselves to rise and go from house to house to take and destroy the engine-looms; in pursuance of which, they did on three successive days assemble themselves in great numbers, in some places an hundred, in others four hundred, and in others about fifteen hundred. They did in a most violent manner break open the houses of many of the King's subjects, in which such engine-looms were, or were suspected to be; they took away the engines, and burnt them, and not only the looms, but in many places the ribbands made thereby, and several other goods of the persons, whose houses they broke open: this they did not in one place only, but in several places and counties, in Middlesex, Essex, Kent, and Surrey, in the last of which they stormed the house of one person, and though they were resisted, and one of them killed, and another wounded, yet at last they forced their way in, took away the looms, and burnt them: the value of the damage they did was computed at several thousand pounds. This they did after several proclamations to depart, made by the justices of Middlesex, and they resisted and affronted the magistrates and officers." (1 Hale, P. C. p. 144, 145.) The reader in comparing this case with the case of Messenger, which is now before him, will immediately perceive, how much weaker the latter is in all its circumstances.



THE TRIAL  
OF  
WILLIAM STAYLEY,  
IN THE KING'S BENCH,  
FOR  
HIGH TREASON.

30 Cha. II. 1678.—6 *Howell*, 1502.

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THE case, now selected, is commonly placed P. 1502. at the head of a long list of trials, which arose out of the Popish plot. Though, strictly speaking, this case was not in the least connected with that extraordinary affair; yet the Court, which tried the prisoner, no less than the counsel who prosecuted, did their utmost to connect the transactions, with a view, doubtless, to take advantage of the popular feeling; and, probably, to this was mainly owing the success of the prosecution.

The trial took place at the latter end of November, in the year 1678, about six weeks after the grand discovery made by Oates, before the Privy Council, on the subject of what is called

the Popish plot. At that time the country was in a state of the utmost consternation and alarm, from the reports of plots and conspiracies. The jealousy, which the people had long conceived against the Catholics and the religious tenets of the King, now burst out into an universal flame. The seizure of Coleman's letters, which followed soon after Oates's discovery, and, still more, the mysterious death of Sir Edmondbury Godfrey, were thought to be a full confirmation of the marvellous story. Nothing was omitted, that could excite the popular feeling. The public exhibition of the dead body of Sir Edmondbury Godfrey worked up the people to such a pitch of grief and madness, that it was expected to end in a general massacre of the Catholics.\*

In this state of general ferment the Parliament met on the 21st day of October.† The first measure adopted was an address by the two Houses to the King, enlarging on the bloody and traitorous designs of Popish recusants, and entreating the King to command all such, by proclamation, to remove to the distance of ten miles from the capital. A national fast was ordered, to return acknow-

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\* North's Exam., p. 202. Bp. Burnet's Hist. vol. ii.

† Parl. Deb. vol. iv. 1022, *et seq.*

ledgments for the late discoveries, and to make supplication for fuller information. A bill was hurried through Parliament, to exclude all Catholics from sitting in either House. The Lords and Commons unanimously resolved, that there was a damnable and hellish plot contrived and carried on by Popish recusants, for the assassination of the King and the subversion of the Government. And the House of Commons, in their zeal for the Protestant faith, expelled a member for doubting the existence of the plot. "Thus the cry against Popery," says Ralph \*, "which had been so many years in raising, and to which the most eminent loyalists, both laymen and ecclesiastics, had most eminently contributed, now spread through the whole kingdom, and was echoed back from every corner; all parties joined in it; every gale favoured it; and no disagreeing voice could obtain a hearing." At this singular crisis, when the credulity of the nation kept pace with the villainy of the informers, —when, (as Dryden says truly, though in verse,) "T'was worse than plotting, to suspect the plot," —commenced the trials, or rather the executions, for the Popish conspiracy.

The prisoner was indicted for high treason, P. 1502.

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\* Ralph, Hist. vol. i. p. 387.

on a statute passed shortly after the restoration; by which statute it was enacted, that if any person should compass, imagine, devise or intend death, or destruction, to the King, or bodily harm leading to death or destruction, or imprisonment or restraint of the person of the King, or to deprive or depose him; and such compassings and imaginations should express, utter, or declare by any printing, writing, preaching, or malicious and advised speaking; every such person, being legally convicted thereof, upon the oaths of two lawful and credible witnesses, should be adjudged to be a traitor, and suffer the pain of death.\*

The indictment having been read, and the prisoner having pleaded not guilty, Serjeant Maynard stated, that the offence was as great as could be, and would be proved as clear as could be. The Attorney-General, Sir William Jones, said, it would be proper to give some account, why, among so many offenders, (some of them of greater quality than the prisoner), they chose first to bring this man to trial. "There are a sort of men in the world," added the Attorney-General, "who endeavour what they can, to cry down this discovery

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\* 13 Cha. 2. c. 1. This act was made to continue during the life of the King.



of horrid and damnable designs against the King's person, and the Protestant religion. It is true, some are so charitable as to think, the Roman Catholics in England do promote the Roman Catholic religion; but that the design, against the King's person, is a fiction. But they shall do well to take warning, by the trial of this man, and the imprisonment of so many offenders, that, even since this discovery, some have had this treasonable mind and traitorous attempt against the King, and said those words, for which he is charged in the indictment."

The substance of the evidence of the two principal witnesses, Castars and Southerland, in support of the prosecution, was as follows: On the 14th day of November, about eleven o'clock, the prisoner was in company with one Fromante, a Frenchman, at a tavern in King Street, taking some refreshment: they conversed together in French. Stayley said twice, "The King is a grand heretic," at the same time striking his hand against his breast, and stamping on the ground five or six times with great fury. Fromante said, "The King of England is a tormentor of the people of God;" on which the prisoner answered in a great fury, "He is a great

heretic, and the greatest rogue in the world ; there is the heart, and here is the hand, that would kill him ; the King and the Parliament think all is over, but the rogues are mistaken." The prisoner and his companions were at this time in a room, adjoining to that in which the two witnesses represented themselves to be, the door between the two rooms being wide open ; the prisoner stood only seven or eight feet from the witnesses, with his face straight towards them ; and, before this time, neither of the witnesses had ever seen the prisoner. According to Castars, the prisoner said, "I would kill him myself;" Southerland represented him as saying, "I would do it myself." The latter witness stated, that he wrote down the words presently, in French, as he heard them from the prisoner, adding afterwards the names and the place. This paper he produced. "What did you do, upon this?" said the Chief Justice Scroggs to Castars. "I did not know what to do," answered the witness, "being ignorant of the laws of the country. I thought it was a great matter, and perceiving that he was gone, I caused a person to attend him, who followed him to his father's shop, and the next day I apprehended him."

Pris. "I said I would kill myself."

L. C. Just. "Would you kill yourself, because you said the King was a heretic? You acknowledge yourself to be a Roman Catholic?"

Pris. "And in that faith I intend to die."

Att. Gen. "Then the prisoner doth not deny, that he said, the King of England was a great heretic; and can we imagine him to be in such a passion, that he would kill himself?" [NOTE A.]

The third witness, Garret, was called to give P. 1504.  
an account of what Castars had said to him, respecting the transaction in the tavern. This was brought forward as a confirmation of the evidence of the former witness. Garret stated, that Castars came to him in a great passion, (but when, or where, does not appear,) saying, 'Stayley had declared he would kill the King himself,' adding at the same time with vehemence, 'that he could not suffer it, that he would run upon him, that he could not be quiet.' — Here the case on the part of the prosecution closed.

"Now, what can you say to this?" said the Chief Justice Scroggs to the prisoner.

The prisoner, first, gave an account of what passed on the day of his apprehension, which

was the next day after the supposed treasonable language. He stated, that the witness Southerland came to him, as he was in his shop, and enquired for some article of sale, for which he referred him to other persons; that Southerland then went away, but returned in a quarter of an hour, informing him, that an honorable person wished to speak with him. This honorable person was Castars. ‘I went over to this person,’ continued the prisoner. “This gentleman (Southerland) made a great many ceremonies to me, and read some paper. Castars told me, ‘You see what the gentleman reads. I would advise you to look to it.’ Then, as he took me aside by the window, I said, ‘I do not understand you — I am innocent — you must not put any bubble upon me.’ Upon this, the Captain (Castars) ran out in a fury, fetched a constable, and carried me to the Gate House.”

The prisoner then proceeded to give an account of what passed the day before, when he was supposed to have uttered the treasonable language. “As I was in my shop, said the prisoner, on the day before, intending that very day to go with a friend into the country, and prepared to do so, Fromante, an old man, a friend of mine, came to me, saying, ‘The



constable wants to have something; I know not what it is; come and assist me.' I went to the place, and the constable told me, I was to appear by ten o'clock. Fromante then went out. Owing him some money, I went and paid him. I came back, and sat down by the window out of sight, the old man sitting on my right hand; we sat and discoursed, as innocently, as I thought, (and before God,) as I ever spoke in my life."

L. C. Just. "What discourse had you?"

Pris. "Our chief discourse was about the materials of our business, and it was about the King of France's usurpation over his subjects, and the happiness of our little people, the commonalty of England. That was, indeed, usually our discourse, when we met together."

L. C. Just. "Did you say, you would kill the King of France, and that he was a great heretic? Do you believe, that the King of France is an heretic?"

Pris. "I know not what his opinions are; that is to his own conscience."

L. C. Just. "Did you name the word, *heretic*?"

Pris. "Not to my knowledge,—not of the King of England. We might have discoursed of the happiness and of the difference of their

governments. I have been thought a person of some intelligence, and of some understanding in the world, and not to expose myself to speak these blasphemous words, in a public large room, the door being open, with so high a voice that these gentlemen in the next room should hear me, in French, and in a street where almost all are Frenchmen. The words I abhor. I have been always a great admirer of my prince."

P. 1508. A witness was then called, on behalf of the prisoner, to bear testimony to his loyalty. He mentioned several occasions, on which the prisoner had expressed himself in terms of the warmest loyalty towards the King. "That was," retorted the Chief Justice, "when he spoke to a Protestant."

P. 1509. The Chief Justice Scroggs summed up the case to the jury. [NOTE B.]

In the first place, he stated, or rather misstated, the law. He laid it down, "that the legislature had thought it right to make mere words, without any thing besides, to amount to treason; that is, said he, such words, as expressed what, if done, would be treason:" whereas, in truth, the statute made only such malicious and advised speaking treasonable, as expressed the compassing imagination, and

intention of the speaker to kill or destroy the King. The questions, to be determined by the jury, would properly have been, first, whether the prisoner, at the time of speaking the words imputed to him, compassed, imagined, or intended the death or destruction of the King, &c. ; secondly, whether he spoke the words maliciously and advisedly, that is, deliberately and from the working of such guilty imagination and design. But the Chief Justice kept out of view the first and most important of these questions, as to the intention of the prisoner ; and left, for the consideration of the jury, this single point, whether the prisoner spoke the words advisedly and maliciously.

He then shortly recapitulated the principal facts ; observing, that there was nothing doubtful in the circumstances, or in the substance of the case, and that there never had been a plainer proof. He protested against all compliance with the rumours and disorders of the times, and declared, that when a man's life is in danger, the verdict should depend upon witnesses, who swear the fact downright upon him. In the next sentence, he addressed the jury in these words : ' You, and we all, are sensible of the great difficulties and hazards, which are now both against the King's person,

and against all Protestants, and against our religion also, which will hardly maintain itself, when they have destroyed the men. But let them know, that many thousands will lose their religion with their lives; for we will not be Papists; let the Jesuits, (who are the foundation of all this mischief,) press what they will, in making proselytes, by telling them, “do what wickedness you will, it is no sin, but we can save you, and if you omit what we command, we can damn you.”\*\*\* Excuse me, if I am a little warm, when perils are so many, and their murders so secret, that we cannot discover the murderer of that gentleman, whom we all know so well, (alluding to the death of Sir Edmondbury Godfrey); things are transacted so closely, our King is in such great danger, and religion is at stake. It is better to be warm here, than in Smithfield.\*\*\* When a Papist once hath made a man a heretic, there is no scruple to murder him. Whoever are not of their persuasion, are heretics; and whoever are heretics, may be murdered, (if the Pope commands it,) for which they may become saints in heaven; this is what they have practised.\*\*\* Therefore discharge your consciences, as you ought to do: if guilty, let him take the reward of his crime;



and you shall do well to begin with this man for perchance it may be a terror to the rest.'

These last words were a death-warrant to the prisoner. The jury immediately returned a verdict of guilty. "Now," said Scroggs, "you may die a Roman Catholic; and when you come to die, I doubt you will be found a priest too." No time was lost in dragging the wretched man to execution. The arraignment had taken place within a week after the alleged offence: the trial was on the day after the arraignment; and the execution within five days after the trial.

In reviewing this trial, the evidence of the last witness, which was intended only as a sort of confirmation of Castars, must be laid entirely out of the case. Such evidence, though often resorted to in the earlier State Trials, will, on a little reflection, be found utterly inadmissible. When the question is, whether the prisoner uttered certain expressions, or did a certain act, as a witness has stated upon oath at the trial, it cannot surely be considered any confirmation of that witness, to prove, that he has made the same statement, without oath, upon some former occasion. This, at the best, only shows, that he has been consistent, and not varied in his narrative; which may fre-

Remarks.

quently be remarked of the most suspicious as well as of the most honest witness. That alone deserves the name of confirmation, which results from the proof of such independent facts, as are not within the power or control of the witness, who is to be confirmed. Any thing which may have been concerted or prepared by that witness himself, for the purpose of apparent confirmation, cannot be entitled to the least weight, and rather serves to raise distrust than confidence. Of this kind was the evidence in question. Nor was there any thing in the nature or circumstances of the proposed evidence, to recommend it. On the contrary, there appears to be something in the account extremely suspicious ; when it is remembered, that the man, who professed so much loyalty and zeal, as scarcely to be able to restrain himself from offering personal violence to a traitor, (for so Castars represented the prisoner,) yet had such complete self-command, that he did absolutely nothing, and for one whole day gave that traitor an opportunity of making his escape. Such evidence, far from confirming, will excite only suspicion.

The case must, therefore, be considered, as resting on the evidence of the two first witnesses ; and their account is of a very singular description. It is strange, that these supposed

traitors, Stayley and Fromante, should talk treason in a public room of a tavern, so loud as to be distinctly overheard by two witnesses, and so close to them, that they were sure to be taken *flagrante delicto*. It is singular, that the prisoner should do this, in open daylight, perfectly sober, in the presence of strangers, standing opposite, and in public view : that he should do it too, at a time, when the minds of men were alarmed and agitated by the bursting of the Popish Plot, when informers and spies might be expected in every street. Then again, the language, imputed to the prisoner, was so violent, such downright treason, he could not hope to escape immediate apprehension. “ *Ipse capi voluit. Quid apertius ?* ”

In a case so full of improbability, we naturally look to surrounding circumstances, for explanation and information. And this is more especially necessary, in a case, where the charge against the prisoner rises out of a conversation, — which is always liable to be mistaken, misunderstood, or misreported. What then is the context ? Let us compare the part of the conversation, supposed to be treasonable, with that which precedes, and with that which follows. Unfortunately, there

is no context at all. This is one of the most remarkable circumstances of the case : the two witnesses happen to make their appearance, just at the critical and lucky moment, when the treason begins, and make their exit at the moment when the treason ends. They hear just enough, to eke out something of a case, but not a word to spare. Never was a case so meagre, or such a charge so scantily proved. There is a *minimum* of every thing : the smallest number of witnesses : the least possible quantity of evidence, and the least possible quantity of probability.

Then, as we have no context, to clear up the doubt, let us look to the conduct of the witnesses, and consider, whether that is natural and probable. It has been wisely said, by a most able and accomplished Judge, to be a good and safe rule in weighing the evidence of a fact, which you cannot compare with any other evidence of the same fact, to compare it with the actual conduct of the persons who describe it.\* To try the witnesses by this test, their conduct

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\* Sir W. Scott, in *Evans v. Evans*, Dr. Haggard's Consistory Reports, vol. i. p. 64. The judgment in this case, exhibits one of the finest specimens of judicial reasoning extant.



presents a most striking contrast. One of them, we are told, had the precaution to take down the words in writing, as they were uttered : This witness was all deliberation and forethought. The other was all vehemence and passion ; — “ He could not bear such words against the King ; ” — “ he would run upon the prisoner ; ” — “ he could not be quiet.” “ But,” said the Chief Justice very naturally, “ What did you *do*, upon this ? ” And every one present, not in the secret, would naturally expect to hear the witness answer, that he instantly took him into custody as a traitor. No such thing : quite the contrary. These two witnesses, the one so warm, and the other so cold, said nothing, did nothing, and allowed the prisoner to return quietly to his house, without interruption, without remonstrance, and without a remark. What could be more suspicious than every part of their conduct ? Southerland’s saying not a word, when he ought to have made an open charge, — his taking down the words in writing, instead of taking the prisoner into custody, — his putting up the writing without a syllable, instead of showing it openly, and challenging the prisoner to deny its truth, — the absence of all proof confirmatory of what

he stated, as to his writing the paper at the time, (in which he might have been confirmed, if the fact were so), together with the fact, that neither of the witnesses took any notice of the business until the following day ;—these are circumstances, sufficient to raise the strongest suspicion, that the written paper was a fabrication, and designed for some dishonest purpose.

The account given by the prisoner, as to what passed on the following day, was not denied or contradicted, in any particular, by the witnesses for the prosecution. It has, besides, in its favor, this internal evidence, that it carries with it the air of reality, and is not of a nature likely to be invented. This account, if believed, is decisive of the dishonesty of the transaction, and of the infamy of the witnesses. For if it is true, that Southerland, when he called upon Stayley on pretence of purchasing some article, said not a word as to any thing that had passed on the preceding day, brought forward no charge, made no complaint ;—if it is true, that Southerland persuaded Stayley to quit his house, for the purpose of meeting over the way some honorable person (as he called him), (not saying who it was, or for what purpose he was to go,) and that honorable person

turned out to be Castars ; — if it is true, that, at this meeting, when the paper was produced, the two witnesses, acting in concert, attempted to intimidate the poor goldsmith, and when he resisted, declaring it was all a bubble and a fraud, that then for the first time they resorted to a constable, — if these facts are so, what reasonable man can for a moment hesitate in coming to the conclusion, that the charge was utterly false, that the witnesses were manifestly perjured, that their first design was to extort money from the prisoner, and, failing in this, that their next object was, to earn money as informers in the business of the Popish Plot. Such was the case, which the Chief Justice, in passing judgment, pronounced “to be proved by most apparent evidence, and made plain by the matter, and manner, and all other circumstances.”

## NOTES.

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NOTE A. p. 335.

CASTARS and Southerland were men of vile character. The former is said to have falsified the date of a warrant. Bishop Burnet gives the following account of them in his History, vol. ii. p. 38. "When I heard, who the witnesses were, I thought I was bound to do what I could, to stop it. I sent both to the Lord Chancellor, and to the Attorney-General, to let them know what profligate wretches these witnesses were. Jones, the Attorney-General, took it ill of me, that I should disparage the King's evidence: the thing grew public, and raised great clamor against me; it was said, I was taking this method to get into favor at Court. I had likewise observed to several persons of weight, how many incredible things there were in the evidence, that was given; I wished they would make use of the heat, the nation was in, to secure us effectually from Popery; we saw certain evidence to carry us so far as to graft that upon it; but I wished they would not run too hastily, to the taking men's lives away upon such testimonies. Lord Hollis had more temper, than I expected from a man of his heat. Lord Halifax was of



the same mind ; but the Earl of Shaftsbury could not bear the discourse : he said, we must support the evidence, and that all those who undermined the credit of the witnesses, were to be looked on as public enemies. This Castars died soon after the trial in great horror, and ordered himself to be cast into some ditch, saying, he was no better than a dog."

NOTE B. p. 340.

Bishop Burnet has drawn the character of Sir William Scroggs. "He was a man more valued for a good readiness in speaking well, than either for learning in his profession, or for any moral virtue. His life had been indecently scandalous, and his fortunes were very low. He was raised by the Earl of Danby's favor, first, to be a Judge, and then to be the Chief Justice. And it was a melancholy thing, to see so bad, so ignorant, and so poor a man raised to that great post."—History, vol. ii. p. 56.

In the early trials for the Popish Plot, Scroggs went with the tide of popular opinion, and pressed hard against the prisoners. In Langhorne's case, he declared, that the Plot had been proved as clear as the day, by Oates ; and that Oates had been confirmed by evidence, which could never be answered. About a month afterwards, in Sir George Wakeman's case, (which was looked upon as the trial of the Queen, — for Sir George Wakeman was the Queen's physician,) he tacked, and took an opposite course, summing up strongly in favor of the accused ; and in Lord Castlemaine's case, he pointed out many improbabilities in the narrative of the witnesses. For

this conduct the Chief Justice was attacked by the Country-party in Parliament; and one of the articles, in the impeachment against him, was his harsh treatment of the witnesses in some other prosecutions for the Plot. On this charge, the Chief Justice may be acquitted. If such witnesses, as Oates, Jennison, Bedloe, Dangerfield, and Dugdale, had been exposed in a much earlier stage of the proceedings, justice would have been done, and much innocent blood had been saved.

THE TRIAL  
OF  
LORD VISCOUNT STAFFORD,  
BEFORE THE LORDS AT WESTMINSTER,  
ON AN IMPEACHMENT  
FOR  
HIGH TREASON.

32 Cha. II. Nov. 30. 1680.—7 *Howell*, 1218.

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IN the opening of the last trial, a short account has been given, of the universal panic into which the country was thrown by the cry of a Popish Plot, and of the principal occurrences in Parliament connected with that extraordinary business.

The trials of the pretended criminals proceeded with great dispatch. Coleman, the most obnoxious of the conspirators, was first brought to trial. His letters were produced against him. They contained, as he himself confessed, much indiscretion; but, unless so far as it is illegal to be a zealous

Catholic, they seemed to prove nothing criminal, much less treasonable, against him. Oates and Bedloe were the chief witnesses against him. He received sentence of death, which was soon afterwards executed. He suffered with calmness and constancy ; and to the last, persisted in protestations of his innocence.

Coleman's execution was succeeded by the trial of Father Ireland, who, it is pretended, had signed, together with fifty Jesuits, the great resolution of murdering the King. Grove and Pickering, who had undertaken to shoot him, were tried at the same time. The only witnesses against the prisoners were still Oates and Bedloe. Ireland affirmed, that he was in Staffordshire all the month of August, a time when Oates's evidence represented him in London. He brought forward some proof to this effect, and could have obtained still further evidence, had he not been debarred most iniquitously, while in prison, from all use of pen, ink, and paper, and denied the liberty of sending for witnesses. All these men, before their arraignment, were condemned in the opinion of the jury, judges, and spectators ; and to be a



Jesuit, or even a Catholic, was of itself a sufficient proof of guilt. The Chief Justice, Scroggs, in particular, gave sanction to all the narrow prejudices and bigotted fury of the populace. He pleaded the cause against them, browbeat their witnesses, and on every occasion represented their guilt as certain and incontrovertible. He even went so far, as to affirm, that the Papists had not the same principles which Protestants have, and, therefore, were not entitled to that credence, which the principles and practices of the latter call for. And when the jury brought in their verdict against the prisoners, he said, "You have done, gentlemen, like very good subjects, and very good Christians, that is to say, like very good Protestants; and now much good may their 30,000 masses do them." All these unhappy men went to execution, protesting their innocence, a circumstance which made no impression on the spectators. The opinion, that the Jesuits allowed of lies and mental reservations, for promoting a good cause, was at this time so universally received, that no credit was given to testimony, delivered either by that order or by any of their disciples. It was forgotten, that all the

conspirators, engaged in the gunpowder treason, and Garnet, the Jesuit, among the rest, had freely on the scaffold made confession of their guilt. The blood, already shed on account of the Popish Plot, instead of satiating the people, served only as an incentive to their fury; and each conviction of a criminal was regarded as a new proof of those horrible designs imputed to the Papists.

Two successive Parliaments had by solemn resolutions recorded their deliberate opinions of the reality of the Popish Plot, and denounced those who were so rash as to question its existence. A third Parliament, which met in the Autumn of 1680, adopted the same faith; and the Commons proved themselves not unworthy of their predecessors, by expelling a member, Sir Robert Cann, for discrediting the plot. Their vehement prosecution of the Popish Plot, after so long an interval, discovers such a spirit, either of credulity or injustice, as admits of no apology. The impeachment of the Catholic Lords in the Tower was revived; and as Lord Stafford, from his age, infirmities, and narrow capacity, was deemed the least capable of defending himself, it was determined to make him the first

victim, that his condemnation might pave the way for a sentence against the rest.\*

The first step, in the proceedings against the Lord Viscount Stafford, which it is necessary to mention, occurred on the 25th of October, 1678. On that day, Lord Stafford P. 1218. informed the House of Peers, that having heard of a warrant, issued for his apprehension by the Lord Chief Justice of England, he thought it right to submit himself to their judgment. The Lord Chief Justice, Scroggs, being present, stated, that he had been required by the House of Commons to issue his warrants against the Earl of Powis, Lord Viscount Stafford, Lord Arundel of Wardour, Lord Petre, and Lord Bellasis, on charges of high treason ; and that, in consequence, he had issued his warrants for their apprehension, having first taken the examination of Titus Oates. This examination was then read, from which it appeared, that Lord Stafford was charged by Oates with being engaged in a treasonable conspiracy against the King. Lord Stafford denied the charge, and surrendered himself

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\* The account above given, of the prosecutions for the Popish Plot, is extracted chiefly from Hume's History of Cha. II., ch. 68, 69.

P. 1225. to the warrant. In a few days the Commons informed the House of Lords, that they had resolved to impeach the five Peers above-named, of treason and other high crimes and misdemeanors, and would, in convenient time, exhibit their articles of impeachment against them.

P. 1228. The Parliament, in which this proceeding commenced, being shortly afterwards dissolved, and a new Parliament assembled, the House of Lords referred to a Committee of Privileges to enquire into the state of the impeachments, which had been brought up from the House of Commons; and to consider, whether the dissolution of the last Parliament had the effect of abating the impeachments. The Committee reported their opinion, that all cases of appeals and writs of error continued, and were to be proceeded on, *in statu quo*, as they stood at the time of the dissolution of the Parliament, and that the state of the impeachments was not altered by the dissolution. The House of Lords agreed with the Committee in this opinion.\*

Articles of impeachment were brought up

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\* See Hatsell's Prec., vol. ii. p. 317.



by Lord Russell and other members of the House of Commons, and presented against the five Peers, on the 7th of April, 1680, which was nearly two years after their commitment to the Tower. [NOTE A.] These P. 1235. articles stated, in substance :—That for many years a traitorous conspiracy and plot had been contrived and carried on, by Papists, to alter and subvert the laws and government of this kingdom, and to suppress the true religion therein established : That William Viscount Stafford, with many other persons, (who were named,) had within the time aforesaid traitorously consulted and acted for the accomplishment of the said traitorous designs, and for that end had conspired and resolved to imprison, depose, and murder the King, and deprive him of his royal state and dignity, and by malicious and advised speaking and writing had declared such their purpose and intention, also to seize and share among themselves the estates of the King's Protestant subjects : That the said conspirators had held several meetings and consultations, wherein it was contrived and designed among them, what means should be used, and what persons and instruments employed, to murder the King, and did resolve to effect this by poisoning, shoot-

ing, stabbing, or some such way, and hired and employed persons to murder him: That the said conspirators had raised men, money, and ammunition therewith to levy war and rebellion, and to invade the kingdom with foreign forces: That when Sir Edmondbury Godfrey, a justice of peace, had taken several examinations concerning the said plot, they procured persons to lie in wait for him and murder him, and did murder him, in order to suppress the evidence which he had taken, and to deter magistrates from acting in the discovery of the said conspiracy.

P. 1297.

Of the five Peers, who had been impeached, Lord Stafford alone was brought to trial. His trial commenced on the 30th of November, 1680. When the noble prisoner was brought to the bar, the Lord High Steward (the Earl of Nottingham) stated the nature of the charge, and then addressed him in the following words: "In this so great and weighty cause, you are to be judged by the whole body of the House of Peers, the highest and noblest Court in this, or perhaps in any other part of the Christian world. Here you may be sure, no false weights or measures ever will be found: here the balance will be exactly kept, and all the grains of allowance, which your case will bear, will certainly be

put into the scales. But as it is impossible for this Court to condemn the innocent, so it is equally impossible that they should clear the guilty. If, therefore, you have been agitated by a restless zeal, to promote that which you call the Catholic cause, if this zeal have engaged you in such deep and black designs as those you are charged with, and this charge be fully proved, then you must expect to reap what you have sown; for every work must, and ought to receive the wages that are due to it. Hear, therefore, with patience what shall be said against you, for you shall have full scope and time to answer it: and when you come to make your defence, you shall have a fair and equal hearing."

The King's Serjeant, Maynard, one of the P. 1298.  
members of the Committee appointed to manage the evidence, opened the case on the part of the prosecution.\* He spoke much of the importance of the trial; and said, that not only England kept its eyes on the great proceeding, but the whole Christian world was concerned in

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\* Serjeant Maynard was one of the most learned lawyers of his day. He had prosecuted the cause against the Earl of Stafford forty years before, and was now near eighty years of age. See Evelyn's Memoirs, vol. i. p. 528.



its issue. The topic, on which he laid the greatest stress, was, what he called, the general and universal Plot. It was necessary, he said, to show the existence of the general Plot, because it had been called by some a State-plot, something unreal, a chimera, a mere imagination. He spoke of its existence as a fact ascertained beyond the possibility of doubt: That its object was no less than the subversion of the whole nation, the murder of the King, the invasion of the kingdom, the levying of war, the suppression of the Protestant religion, and a general massacre: That this Plot was one and universal, that some acted in its support in France, some in Spain, some in Ireland, some in Scotland, some in England; that all consented, all concerted, all concurred to accomplish the design of the Plot. "We have a matter of thirty Jesuits in chace, (said the Serjeant,) in this business." To accomplish the design, arms were to be provided, men to be raised, an army to be formed. The speaker dwelt much also on those common topics of the day, which were best calculated to alarm, confound, perplex, and prejudice, — the mysterious death of Sir Edmond Godfrey — the gunpowder-treason plot — and the violent attempts of Papists in other kingdoms, and in former times. He re-



lied on the death of Sir E. Godfrey, partly as a confirmation, partly as the detection and proof of the Plot. "When Oates first made a discovery," said Serjeant Maynard, "it seems not to have had that weight, which we think it will now clearly have; and had not the murder of Sir E. Godfrey followed in the neck of it, the world, as it was asleep, would have lain so; but that awaked us." With the same confidence, he relied on the Plot, as an explanation and proof of the murder.—Serjeant Maynard was followed, in the opening of the case, by Sir Francis Winnington, and Treby.

The managers proposed to divide the evidence into two distinct branches: the one, relating to the general Plot; the other, relating to the part which the prisoner was accused of taking in the Plot. "Our evidence," said one of the managers, "will consist of two parts, general and particular: the general, to show the universal conspiracy: the particular, to show what special part this noble Lord, the prisoner at the bar, had in it. Should we not take this course of evidence, it might be a just objection in my Lord's mouth to say, "You charge me with a design of subverting the kingdom: how is that possible to be undertaken by me, and those I have had op-

portunity to converse with? a mighty part of the Catholic world had need to be engaged for such a purpose." If this would be a material objection from this noble Lord, then will it be necessary for us to obviate the objection, by showing, first, that there was such a grand and universal design of the Papists, in which this Lord was to co-operate for his distinct share." In pursuance of this plan, the managers called six witnesses, (Smith, Dugdale, Praunce, Oates, Dennis, Jennison,) to prove the general conspiracy.

P. 1310. The first witness, Smith, delivered his account as to the general nature of the general Plot. "I remember very well," said he, "when I first went into France, I became acquainted with Abbot Montague, Father Gascoigne, and several other Popish Priests and Jesuits, who often discoursed with me, and told me, if I would make myself a Catholic, I should have an employment amongst them in France, and afterwards in England; for they did not doubt, the Catholic religion would come in very soon. I asked the Abbot one day, what reason he had to believe it? He told me, two reasons: first, they did not doubt of procuring a toleration of religion, by which they should bring it in without noise:

secondly, that the gentry, who went abroad, observed the novelty of their own religion, and the antiquity of theirs, and the advantages to be had by it. One Father Bennet, and others, told me, the chief reason was, that their party was very strong, and in a few years they would bring it in, right or wrong. But all this," added he, "would not prevail upon me to turn Papist." He continued in France several years; afterwards in his way to Rome he went to Provence, where he was curious to see a school, which the Jesuits had there: the Jesuits made much of him, and told him what he had been told before, that their religion would prevail in England. The Cardinal Grimaldi also made much of him, and converted him to the Romish religion. The Cardinal gave him the same assurances, and told him, "there was but one in the way, and though he was a good-natured man, yet they could not so far prevail upon him, but that to accomplish their designs they must take him out of the way." From Provence, he travelled to Rome, where he lived five years in the Jesuits' College. "And here," said the witness, "I have often heard it disputed in their own college, both preached and privately exhorted,



that the King of England was a heretic, that there was no king really reigning, and whoever would take him out of the way, would do a meritorious action." He named some persons, who had preached this doctrine at the college : namely, Dr. Anderton, Father Campion, and Father Southwell. " Before we came away," continued the witness, " (for we were five or six of us together,) for a whole month these fathers were exhorting us, that we were not obliged to obey the King of England, and that in all private confessions we were to instruct all persons, whom we thought capable of any design, that they should use all their endeavours to promote the Popish religion."

Then follows the account of his coming over to England ; his being employed to say mass for some months in the chapel of the Portuguese Ambassador ; his being sent to the north of England, to the house of one Jennison ; " where," said the witness, " knowing the principles of these people, (the Jesuits and Friars,) I made it my business to rout them away, especially all of Jennison's house." For this, he said, he was smartly reprimanded, by some person, a friend of the Jesuits, who told him, that the Jesuits would endeavour what they could, to bring in



the Popish religion, and taxed him sharply for appearing against it. "I told him," said the witness, "how the Jesuits perverted the Duke of York, and that by these means they would be the chief men in England." He then gave an account of some letters written by Coleman, which he had read in the Jesuits' College at Rome. "In Rome I saw Coleman's letters, and read them once a month as I believe." They gave a flattering account of the progress of the Jesuits at court. "Among other particulars, it was said, the Duke, the Queen, and the chief of the nobility were on their side, and that the Lord Treasurer Danby was expected soon to join them." Then he mentioned an interview with the Abbot Montague, whom he saw again in France, on his journey back to England. The Abbot congratulated him on being a Priest. — "Well," said the witness, "but what am I the better? Where is the employment you promised me, when I should come into England?" The Abbot assured him, he should have it soon, and was glad he had not made himself a Jesuit. He gave an account of gathering of money in the north, in which he was ordered to take an active part. "But," said the witness, "I was against it; I told them, I would do nothing

in it; I thought it was illegal to send money beyond the sea. They told me, it was charity, only to repair the college at Douay; I told them, it was strange there should be so much money raised only to repair one college, which would serve three or four colleges. As to this raising of money," he added, "I conceive it may be inferred, it was for some other private business; and, I believe, was for carrying on the design." At the conclusion of his evidence, he stated what a third person had informed him as to the contents of a letter, which that third person represented himself to have received some time before from Lord Stafford.

"My Lords," observed the manager, "I perceive, the witness in the beginning of his testimony, speaking of the discourse he had at Rome, said 'they told him there was one in the way;' I presume it is very easy to conjecture who that one was." "It was surely the King," said the Lord High Steward. "But we would rather have it explained by himself," replied the manager. "Father Anderton," answered the witness, "and Father Southwell told me, the King was a good man, but was not for their turn, and he was the only man that stood in their way." "Did they name

the King?" "Yes," replied the witness, "it was the common discourse all over the country."

The witness, on being questioned by Lord Stafford, stated, that he had been a Protestant, and was a Protestant abroad, till he went towards Rome: that he had been converted to the Catholic faith about nine years before the trial; and after continuing a Catholic seven years, he became Protestant again, and had been so near upon two years.

It will not escape the reader, that the witness, in fitting his statement to the suggestions of the manager, flatly contradicted himself; for, in the former part of his evidence, he had put the words into the mouth of the Cardinal Grimaldi, at Provence; but in the amended account, he gave them to the Fathers of the Jesuits' College at Rome.

The second witness was Dugdale, who had P. 1315. been servant to Lord Aston. He said, that so far back as about fifteen or sixteen years he had known of a design carried on for bringing in the Romish religion. A priest of the name of Evers, his ghostly father, had informed him, at several times, that several Lords and several Priests, in several places in England, were to carry on this design, and to be prepared with money and arms, for such as

wanted them, against the death of the King : that he had seen several letters from Rome, from Paris, and from St. Omers, relating to the design, encouraging Evers, and exhorting him to encourage the rest who were engaged : that Evers had sent him on messages in order to promote the introduction of the Romish religion, and that all should be ready with money and arms against the King's death ; though, as he admitted, he had not heard any thing till of late respecting the killing of the King. One letter, he said, came to Evers from Lord Stafford, informing him, that all went on well beyond the sea. He remembered also some other letters from Paris, suggesting, that nothing was so likely to assist their cause as the sudden death of the King. One letter in particular, he said, addressed by a man of the name of Whitbread to Evers, gave him a caution as to the persons to be trusted with the design, intimating at the same time, that it mattered not, whether they were gentlemen of quality or not, provided they were stout and trusty for killing the King ; that this was said broadly in the letter, in so many words, without a cypher or secret character. These letters, respecting the carrying on of the plot, the witness said, had been entrusted to him by the



Jesuits, and he had burnt them with the assistance of two persons, whom he named, at the time of his absconding.

He then proceeded to state what had passed at meetings in his presence. "I have," said he, "of late, been several times in company with priests and other gentlemen in the country, when they consulted respecting the introduction of their own religion and the taking away of the King's life, which they intended to be about November, December, or January, 1678. This was their consultation through the whole of the year 1678." Then he mentioned a general collection of money for carrying on the design and providing of arms; that he had himself received 500*l.* for this purpose, and for discharging an account of arms received from abroad; that Lord Aston and others in October, 1678, were to dispose of the arms, which they had so received, to the value (as he heard say) of 30,000*l.*; that on hearing, it was likely there would be an alteration in the government, and having fair promises, he was encouraged to the design, and willing to contribute to it, and did then make over an estate, which he had, of 400*l.* value, for that purpose and for the praying of his soul; and because

he saw money would be wanting, he promised to give a hundred pounds more. He mentioned the names of several persons, who, he said, had contributed towards carrying the design into execution; and stated, that he had met several persons at consultations, at several times, (he should be very loth to charge his memory, in particular, or how many were in company,) especially about September, 1678, when Lord Stafford was present, at which time there was a conversation about providing money for the purchase of arms, and concerning the King's death. He said he had, several times, been brought to the oath of secrecy, for fear he should disclose the design; and he had bound himself by all the promises he could make, and on the sacrament, not to disclose it; but, afterwards, he had received better advice from others, who told him such oaths were better broken than kept, and upon this he made the discovery.

An indulgence, he said, was sent over to this country about the year 1678, and published in all private chapels, offering a free pardon of sins to all who would be active in introducing the Popish religion, or in killing the King. "But what arguments," asked one of the managers, "have the priests used to persuade you to this design?" "They have told me," answered

the witness, "at their meetings, that the King was an excommunicated heretic, and out of the pale of the church; that it was lawful to kill him; that it was nothing more than killing a dog." "Have you heard of any intended massacre?" "I have heard, that about the time when the King should be killed, several should be provided with arms, and rise all of a sudden at an hour's warning, and cut the throats of the Protestants: that was one proposal; and if any escaped, they should be cut off by an army in their flight." "What assistance did the Pope give for the carrying on of this design?" "I heard, the Pope had out of his revenue promised several sums of money for the carrying on of this plot; and particularly, that he would assist the poor Irish with both men and money, and there should not be any thing wanting on his part." "What sums did he contribute to it?" "I have heard of several sums, in general, which he was to contribute." "Did you hear of any sum certain?" "I do not know, but I think I heard sometimes of 10,000*l.*, or some such sum."

The third witness, Praunce, being asked P. 1520, what discourse he had with a priest of the name of Singleton, said, he heard him say in 1678, that he did not fear, but that in a little

time he should be priest in a parish church, and that he would make no more of killing forty Parliament-men, than of eating his dinner. This was the whole of what the witness said.

P. 1320.

Then came forward Titus Oates. He began by giving an account of his pretended conversion to the Popish religion in 1676, while he was chaplain in the family of the Duke of Norfolk. At that time he became acquainted with several priests, who told him, he would soon find the Protestant religion upon its last legs, and that it would become him and all men of his coat, (for he then professed himself a minister of the Church of England,) to hasten home to the Church of Rome. Having had, for some years before, strong suspicion of the great and apparent growth of Popery, and wishing to satisfy his curiosity, he pretended to have some doubts in his mind. But these priests could not satisfy him ; they were not men for his turn, said Oates, not having any great degree of learning. Soon afterwards he became acquainted with some of the society of Jesuits, and these he soon found were the men for his turn,—cunning, politic men, who could satisfy him. He pretended to be convinced by their arguments, declared his conversion, was reconciled, and admitted into the order.



Then follows his account of his mission to Spain. "After I was admitted," said Oates, "the Fathers told me, I had some years upon me, and that I could not undergo the burdens they put on younger men. But what do you think of travelling, said they, and going beyond sea to do our business? I agreed to this; and in April, 1677, sailed to Bilboa in Spain, with letters of recommendation, and thence proceeded to Valladolid." The particularity with which he mentioned not only the month, but even the days of the week, in this part of the evidence, was very remarkable. — In his way to Valladolid, he said, he opened some of the letters, entrusted to him, which mentioned a disturbance designed in Scotland, and what hopes there were of effecting the design of carrying on the Catholic league in England. When he arrived at Valladolid, he found that letters had arrived before him, with news that the King had been dispatched; and in the same month other letters came, announcing that the death of the King was a mistake. The following month brought more letters, with the account that they had procured Beddingfield to be confessor to the Duke of York, and that he might prevail much with the Duke in the design. Fresh letters soon followed from St.

Omers, with an account that Beddingfield had assured them of the Duke's willingness to advance the Catholic religion. In July, he received letters from England, announcing a mission of twelve students, to be instructed by the Jesuits. These students, said the witness, arrived in December, and on their arrival a sermon was preached to them, in which the oaths of allegiance and supremacy were declared to be antichristian, heretical and devilish; the King's legitimacy was vilified, and his religion was said to entitle him to nothing but sudden death and destruction. These, said the witness, were the contents of that sermon as near as I can remember.

Having now been in Spain about five months, he was ordered to return; and came away for England in the month of November, — though, in another part of his evidence, he mentioned having heard a treasonable sermon preached in Spain so late as the month of December. He left England soon again, and went over to St. Omers. While he resided there, in March, 1678, letters arrived from England, mentioning, that there was a very shrewd attempt made upon the person of the King, and that the flint of Pickering's gun or pistol was loose, and his

hand shaking, the King escaped ; for which he received a discipline, and the other (Grove) received a severe chiding. About the end of the same month, the witness was summoned to London to attend a meeting. " At that meeting," said Oates, " they debated and resolved on the death of the King ; that Grove should have 1500*l.* for his pains, and the other (Pickering), being a religious man, should have 50,000 masses said for him." In June following, proposals were made to Sir G. Wakeman for his poisoning the King ; that the 10,000*l.* paid by the Spaniards, should be proposed to Wakeman for poisoning the King. Coleman looked upon this sum as too small, and that 15,000*l.* should be given to him ; but Langham thought it too much, and that he ought to do so great a piece of service for nothing. Five thousand pounds, added the witness, were paid, as the books told me ; but I did not see it paid, being then ill, and not fit to stir abroad.

In July, continued the witness, Father Ashby came to town, and revived the proposal to Sir G. Wakeman, but being sick of the gout, he hastened down to Bath ; (NOTE B.) and when he came there, he was advised by the Fathers, to see how the Catholics stood affected in Somersetshire ; for

they had an account, that they stood well affected. "In August," said the witness, "(for I cannot remember every particular, but refer myself to the records of the house,) about the 26th of August, Fenwick went to St. Omers to give an account of the proposal accepted by Sir G. Wakeman; but in July, (if your Lordships please to give me leave to go back again,) Strange came to town, and falling into discourse about the fire of London, frankly told me, how it was fixed, and how many of those concerned were seized; and, amongst the rest, told me that the Duke of York's guard, as by his order, did receive them, and were afterwards willing to discharge them; which I forgot to mention before; but on the review of my papers, I find, I was told that his guards did release the prisoners suspected about the fire, and that all the order they had for it, as they pretended, was from the Duke. The latter part of July, I communicated with Dr. Tongue, and gave him some particular account of affairs: I desired him to communicate it to some, that might make it known to the King. The King had notice on the 13th or 14th of August, 1678, as I remember; and by the 3d of September I was betrayed, and exposed to the vengeance of those men, whose contri-



vances I had thus discovered. So my intelligence did cease wholly on the 8th of September. Then was I forced to keep private ; and, upon my examinations, what information I gave before the Lords and Commons, I refer myself to them."

The next witness called was Dennis. He P. 1326. stated, that being at Valladolid in the month of June, he saw Oates, who told him, that he went out of England by the consent of the Jesuits, being converted by them to the Roman Catholic faith ; and that his going into Spain was to fit himself for the society of the Jesuits ; that Oates gave him a letter to be delivered at Madrid to an Irish Archbishop, and supplied him with money to defray his expenses. On receiving this letter, the Archbishop, turning round to the witness and another, said, the contents of this letter were, that Oates is desirous of receiving the order of priesthood from me, and if it be so, this man will be a fit man for our purpose ; for Dr. Oliver Plunket, the Primate of Ireland, is resolved, this year, or with the next convenience, to bring in a French power into Ireland, thereby to support the Roman Catholics in England and Ireland, and I myself without any delay will go into Ireland to assist in that

pious work. "Have you heard," said one of the managers, "of any money gathered in Ireland in support of this plot?" "I have both heard of it, and seen it," answered the witness. Then he stated, that in 1688, a Franciscan friar, brother to the Earl of Carlingford, appointed several collectors, for levying money from the religious houses: he mentioned the names of two of the collectors: the collectors came to a convent at Sligo; there they read their commission, the provincial of the order of Dominicans questioned their authority; "and I," said the witness, "asked why the money was levied? to which they replied, that the levy was to encourage the French King, in whose kingdom were several Irish bishops and others, whose business it was to provoke the King to bring an army to invade Ireland, when the time should serve."

Then followed the witness Jennison, who was thus introduced by one of the managers: "Mr. Jennison, who have been among the Papists, and have had great confidence among them, declare what you know of their designs for the destruction of the Protestant religion, or the means of doing it, whether by the murder of the King, or by what other means?"

This witness, after giving an account of

many things, which he said he had heard from other persons, quite indifferent and perfectly irrevelant, spoke of some conversations with Ireland, in one of which the latter, speaking of the chance of the Catholic religion being introduced into England, remarked, that there was only one who stood in the way, and that it would be easy to take off the King by poison. In another conversation, Ireland asked the witness, if he would be one of those who would go to Windsor to assist in taking off the King. The witness refused. Ireland offered to remit a debt of twenty pounds, if he would go. The witness still refused. Ireland asked him to recommend some stout and brave Irishmen, and the witness named four persons. He then pressed the witness again to go with him to Windsor to assist in taking off the King.

The witness also gave an account of other conversations with his brother, Thos. Jen nison, a Jesuit, (since dead,) who falling into discourse on the common topic, concerning the Catholic religion coming into England, used the expression, "If C. R. could not be R. C., he would not long be C. R." meaning, if *Carolus Rex* would not be *Rex Catholicus*, he would not long be *Carolus*

*Rex* : and added, that if the King were excommunicated, he would be no longer King, and it would be no great sin to take him off. On another occasion, said the witness, Thos. Jennison told him, he had a matter of great consequence to impart to him : that there was a design on foot so laid, it could not well be discovered, and that the greatest Catholics in England were in the design ; among them the Lord Bellasis, Lord Powis, and Lord Arundel, and, I believe, said the witness, Lord Stafford was named, but I cannot be positive in that. “My Lords,” said one of the managers, “we desire to ask him, whether he ever heard of Oates being in the plot, or being thought trustworthy among them ?” The witness answered, he had heard so from his brother, Thomas Jennison, the Jesuit.

P. 1535.

Examined copies of records were then given in evidence ; records of the indictment, conviction, and attainder, of Coleman, Ireland, Perkins, Grove, and several others for high treason ; copies of indictments and attainders for the murder of Sir Edmondbury Godfrey ; a copy of a conviction for endeavouring to suborn Bedlow to retract his evidence against some of the Lords in the Tower ; and a copy of the conviction of two persons for conspiring



to asperse Oates and Bedlow. The record of Coleman's conviction was read at length.

These records were produced, as it was said, to show the generality of the plot. But it is difficult to see on what principle they were admissible in evidence against Lord Stafford. Among the parties convicted there were some, whose names were mentioned in this impeachment, as the confederates of Lord Stafford; but this circumstance would not render the records admissible. The greater part of the convicted persons were not even mentioned in the impeachment; and none of the parties were proved to have been connected with Lord Stafford. The objection to the evidence is, that Lord Stafford was a stranger to the proceedings on these records; and that the opinions of juries, on other charges, against other persons, on other statements of facts in his absence, ought not to be admitted to his prejudice.

At the opening of the second day, Lord Stafford requested, that his counsel might be allowed to stand near him, for the purpose of arguing any point of law which might arise. Serjeant Maynard and Sir W. Jones insisted, with much harshness, that they should stand within hearing, not within prompting, and that they should not suggest any thing to the

P. 1339.  
2d day.

prisoner, as the witnesses were proceeding to give their evidence. "When there is cause," observed the Lord High Steward, "take the exception: but they do not as yet misbehave themselves."

The managers then proceeded to the other remaining branch of evidence, which they called the particular evidence, against the noble prisoner. [NOTE C.] One of the Committee, (Treby,) remarking on the evidence, which had been produced, as to the general conspiracy of the Popish party, used these remarkable words: "We doubt not, but your Lordships who hear, and strangers, and unborn posterity, when they shall hear, will justify this prosecution of the Commons, and will allow, that this impeachment is the voice of the nation, crying out, as when a knife is at the throat."

P. 1341.

Dugdale was called again, on the second part of the case. He gave an account of some things which had passed in his presence, while he was in the service of Lord Aston. The first transaction he spoke of, was the following: That about the latter end of August, or some day in September, 1678, Lord Stafford, Lord Aston, and several other gentlemen, were in a room at Lord Aston's house at Tixal. The witness said, he was admitted by

Evers, to hear what passed, for his encouragement. "There I heard them in that debate, at that time, fully determine a resolution upon all the debates that had been beyond sea and before at London; that the best thing they could resolve on, was to take away the life of the King, as the speediest means to introduce their own religion." The Lord High Steward asked, whether Lord Stafford was at that meeting, when they debated to kill the King? "Lord Stafford was there." "Was he consenting to that resolution?" "Yes, I heard every one give their particular full assent." When the witness spoke these words, there arose a great hum, which the Lord High Steward rebuked: "For the honor and dignity of public justice, let us not carry it, as if we were in a theatre."

"On another occasion," said Dugdale, "sometime in September, Lord Stafford meeting me at the outer gate of Lord Aston's house, in alighting from his horse, observed to me, 'it was a sad thing they could not say their prayers but in a hidden manner: but ere long, if things took effect, we should have the Romish religion established.'"

On a third occasion, about the 20th or 21st of September, as the witness said, Lord Staf-

ford, being at Lord Aston's, sent for him to his chamber, as he was rising : Lord Stafford then mentioned to him, that he had heard from Evers and others, that he would be faithful and true to the design of introducing their religion ; that he was himself concerned ; and, for taking away the life of the King, he offered him, for his charges and encouragement, 500*l*. "I communicated to Evers," added the witness, what Lord Stafford had said, and was something in admiration at his offering me such a sum of money, doubting of his ability to make good payment."

He mentioned also a meeting at another time, when Lord Stafford and several others were present. He was then promised rank in the army, and a pecuniary reward ; and it was said, there would be land enough from the Protestants, to satisfy all who acted in the design.

"At another time," said Dugdale, "Lord Stafford, in Lord Aston's dining room, expressed his great zeal, and the reason why he was such an enemy to the King ; that he had suffered much for the King, and had always been loyal, but never had any recompense or preferment ; that this was his chief motive, if religion were not in the case, which was of a higher nature."



"I desire," said one of the managers, "he may say what assurance of pardon he had, if he succeeded?" "I was told," answered the witness, "I need not fear. Lord Stafford told me, I should have a free pardon for it; for the King had been excommunicated, and was a traitor, and rebel, and enemy to Jesus Christ."

"But how could you be pardoned?" asked the Lord High Steward. "I was to be pardoned by the Pope." "But that was for your sins," said the Lord High Steward. "I expected no other, if I had gone on."

Q. Were you promised nothing else but a pardon from the Pope?

A. Yes, I was to be sainted.

"I desire," said a manager, "the witness will give an account of the letters written by Lord Stafford to Evers concerning the design?"

A. There came a letter from Lord Stafford to Evers. I knew it to be his writing. It said, things went on well beyond sea for the carrying on of the design, and so he hoped they were going on here.

Being asked by the Lord High Steward, how long he had known of this plot, he answered, he had known of the general plot, for

introducing the Popish religion, about fifteen or sixteen years ; not a plot for taking away the King's life, but for making ready both men and arms against the time of his death.

P. 1347.

Oates was again called. "Dr. Oates," said the manager, "pray speak your knowledge of my Lord Stafford being engaged in the design?" "I desire I may be left to my own method," answered the witness. Then he took his own course, and began, by saying, that in 1667, there had been divers attempts upon the life of the King, as the Jesuits told him ; and that in the year 1674 there was such an attempt, on account of the King's withdrawing the indulgence. He said, he had, while he was in Spain, in 1677, met several letters signed Stafford, in which Lord Stafford assured the Jesuits of his zeal in promoting the Catholic design. Other letters to the same effect, and signed Stafford, he said he saw at St. Omer's, in the same year ; and in the next year, some letters from Lord Stafford, blaming Coleman for communicating several great secrets respecting the great affair, to persons, of whose fidelity he was not secure. That in 1678, Lord Stafford came to Fenwick, and there received a commission from him to pay an army, which was to be raised for

promoting the Catholic interest, and promised to effect the business, adding, that he was then going into the country, but that, he doubted not, Grove would do the business at his return ; that speaking with Fenwick concerning the King, he said, the King hath deceived us a great while, and we can bear no longer.

“ I desire to know,” asked Lord Stafford, “ where Mr. Fenwick lived ? ”

OATES. — His Lordship, I suppose, knew very well where he lived : he lived in Drury-Lane.

LORD STAFFORD. — I will submit to any thing, if ever I saw the man, or heard of him, till the discovery of the plot.

OATES. — He came to him by the name of Thompson.

LORD STAFFORD. — I know one Thompson, but he was an English merchant in Brussels, not a Jesuit.

Lord Stafford denied also that he had ever seen Oates at Fenwick's or elsewhere. “ I will willingly die,” said he, “ if ever I saw this Doctor in my life.”

OATES. — I excuse my Lord for that ; for I was in another habit and I went by another name ; and your Lordships do remember, I

came in another habit to make the first discovery.

Oates mentioned again some letters, which he said he had seen abroad, of Lord Stafford's writing: on which Lord Stafford observed, that he had not written any one letter to any priest for twenty-five years, nor had any correspondence with any Jesuit.

P. 1351. Turberville came next, and was directed, like Oates, in giving his account, to use his own method. First, he gave an account of his being persuaded by Lady Powis and her confessors in 1675, to go over to France, in order to be admitted into a religious order: but finding there, as he said, nothing but hypocrisy and villainy instead of religion, he escaped back to England. That his friends were angry with him for returning, and inveterate against him; that, having no hopes in England, he resolved to return, and did return to France, where a brother endeavoured to procure his admission into an order of Benedictine monks, but, thinking all religious orders equally bad, he resolved to go back again to England. That at this time his brother and two Benedictine monks recommended him to the notice of Lord Stafford, who was at Paris; he was with him several times, and



was to go over with him in his yacht to England. "After I had been there for a fortnight with this Lord," said the witness, "Lord Stafford, understanding my condition from my brother and the other fathers of the convent, and imagining that I was a fit instrument to be employed, proposed to me a way, whereby (as he told me) I might not only retrieve my reputation with my relations, but also make myself a very happy man; and, after having exacted from me all the obligations of secrecy, which I could give him, he at length told me in direct terms, it was to take away the life of the King of England, who was a heretic, consequently a rebel against God Almighty. I looked upon it as an extraordinary attempt, and desired to consider of it, before I would undertake it. The witness said, he promised to give his answer at Dieppe, whence they were to sail for England. Then he mentioned this particular, that, when he took leave of Lord Stafford, he was sitting upon a bench, troubled with the gout in his foot. He afterwards received a letter from the prisoner, informing him of his intending to sail from Calais, and directing him to wait upon him in London. "I have one thing more to ob-

serve to your Lordships," said the witness ; "when I got passage from Dieppe in a boat for England, I never came near Lord Stafford, because, being not willing to undertake his proposal, I thought myself not safe even from my own relations ; therefore I made applications to the Duke of Monmouth, who recommended me into the French service ; and by that means I avoided his Lordship's further importunity."

Q. — You say, observed the Lord High Steward, Lord Stafford proposed to you the killing of the King : did he plainly make the proposal, in direct terms, to kill the King ?

A. — Yes, he did, my Lord.

Q. — What did he offer you, to do it ?

A. — Nothing — for I would not accept of it. I told him it was a matter of great concernment, and I ought to consider of it : and I took time to think of it, and would give him my answer at Dieppe, which he came not to ; and so there was an end of it.

Q. — What engagements of secrecy had you given my Lord, before he opened himself so plainly to you ?

A. — I gave my Lord my word and my promise, that I would not discover it to any per-

son directly or indirectly : my Lord had nothing of an oath from me.

Q. — How long have you been in England ? asked the Lord High Steward.

A. — I cannot answer punctually. I have been in England four years.

Q. — How came it to pass, you did not discover this sooner ?

A. — I had no faith to believe, that I should be safe, if I did it, but my brains might be knocked out ; and this kept me from doing that service, which I might be able to do, if I deferred it.

Q. — How came you to discover it now ?

A. — The King's proclamation, and some friends, that have persuaded me, I may do it with safety.

The evidence of this man closed the case on the part of the prosecution.

Lord Stafford was called upon for his defence, at the close of the second day. He spoke at some length, with a courage and ability far surpassing the expectation of his friends. He began his speech with an account of his own sufferings. He had been imprisoned for two entire years, deprived of the assistance of his menial servants, separated from his wife and family. He had hoped for

Defence,  
p. 1356.

an earlier trial, and waited impatiently for an opportunity to clear himself in the face of his judges and of his country. It was a misfortune to be accused of any offence ; to be accused of the crime of treason, was a matter of deep distress to him ; to be impeached of this crime by the House of Commons, whom he had ever considered the great and worthy patriots of the kingdom, was a load too heavy for his weak body, and still weaker mind, to support. These afflictions, joined to others of a private nature, had so disturbed his reason, he scarcely knew how to clear himself. "Therefore," said the noble Lord, "I do with all humility beg pardon, if I say any thing that may give offence, or urge what may not be to the purpose ; all of which, I desire, you would be pleased to attribute to the true cause, my want of understanding, not to any want of innocence."

The managers of the Commons, he said, great and able men, and doubtless well read in the law, had set forth treason in a horrid shape : but strongly as they had described the crime, it could not be represented so horrid, as he had always conceived it in his own mind. Treason he held to be the worst of sins : next to treason, murder : but the murder of the



King far beyond all others, and not to be expressed by words. He then adverted to the doctrine, which some had imputed to the church of Rome, concerning the offence of killing an heretical king, and the power of absolving from the oath of allegiance : he referred to the opinions and writings of many fathers and doctors of the church, and to the council of Trent, which had declared such a doctrine to be damnable and heretical ; and concluded with these words, “ My lords, here in the presence of Almighty God, who knows and sees all things, in the presence of his angels, who are continually about us, and in the presence of my Peers and Judges, I do solemnly profess and declare, that I hate and detest any such opinion, as I do damnation to myself. I desire not salvation more earnestly, than I am cordial in hating this opinion. I know no person on earth, nor all the persons in the world put together, who can in the least absolve me from my allegiance.”

The managers, he said, had spoken of a horrid design to murder the king, to alter the government, and to introduce the Popish religion ; and the witnesses had sworn, that the body of the Catholics in England were engaged in the design. If that were so, he was not

concerned in it. He had found, in reading Sir E. Coke, since his imprisonment, that all accusations of treason ought to be accompanied with circumstances antecedent, concomitant, and subsequent. But not a tittle of any such thing had been proved against him. And the whole compass of his life, from infancy, had been clear of all such imputations. He had owed the honour of Peerage to the late King, whom he had served faithfully and loyally to the hour of his death; and had attended his sovereign in that long exile, from which he had been so happily restored. His life had never given countenance to such accusations, and was a flat denial of all, which those perjured villains — he hoped he might call them so, he doubted not to prove them such — had dared to say against him.

He protested his innocence, and denied all participation in guilty designs. He had denied it from the first hour of his commitment, and had rejected the fullest offers of restoration to liberty, because they had been accompanied with a condition, to which he would never submit, the confession of guilt. Two Peers, who had been deputed by the house to examine him, informed him, they could assure him, that if he would confess his fault, and dis-

close the particulars, the house would intercede with the King for a pardon : but he asserted his innocence. Not long afterwards, the King, from his grace and goodness, sent six of the council to offer him these terms, that although he were ever so guilty, yet, if he would confess, he should have his pardon. Before his apprehension, he had been informed by some of the Lords, that there was something in the plot, which would make him fly. " I have heard," said Lord Stafford, " that when a man is accused or suspected of a crime, flight is a great sign of guilt ; so, remaining is a sign of innocency. If, then, after notice, I suffered myself to be taken, if after imprisonment and accusation, I refused my pardon, and yet had been guilty, I ought to die for my folly as well as for my crime."

After expressing again his abhorrence of the crimes of treason and murder, and alluding to the eviedence of Dugdale, he concluded his speech with these words : " I do profess to your lordships, in the presence of Almighty God, that if I could immediately, by the death of this impudent fellow Dugdale, who hath done me so much wrong, make myself the greatest man in the world that is or ever was, I profess before God, I would not. I cannot

say my charity is so great, but that I should be glad to see him suffer those punishments, which the law can inflict upon him for his crimes ; but his death I would not have. Blood is so great a crime, and I know every man is so careful of giving his voice in the case of blood, I should be very cautious myself: and if I were a judge, I would rather save twenty guilty, than condemn one innocent. I bless God I have not the least desire of the death of any man, and would not for all the world have innocent blood lie upon me."

P. 1361. At the conclusion of his speech, Lord Stafford requested to be allowed to have the use of the several depositions, which had been taken against him, particularly the depositions of Oates, Dugdale, and Turberville; for the purpose of comparing their earlier statements with the evidence given by them at the trial. The managers protested against this application as irregular, and made only for delay. If, said they, the witnesses have contradicted themselves, and this can be shewn from their depositions, the accused may produce such depositions in evidence; he has had ample time allowed him for procuring copies of any informations, which he may wish to use; but now, after a full and suffi-



cient opportunity of procuring copies, to call for the examinations at the bar, and demand them from the prosecutors *ex debito justitiæ*, is contrary to the established practice, and not to be allowed. The accused declared, it was not for delay, that he had wished to have the depositions: unfit as he was to manage his defence, faint and weak with speaking so long, and hardly able to speak any longer, yet he earnestly desired to finish that night, and to proceed instantly, if he could procure a sight of the depositions. After some discussion, the Lords made an order, that their journals, which contained some of the informations, should be brought before them for the use of the accused; but with respect to the supposed information of Turberville, which was said to have been taken by two justices, and was not in the journals, they observed, that they had not the means of giving any assistance, and could not make any order. P. 1369.

The Lord High Steward proposed at the same time to adjourn, for the accommodation of the prisoner; enquiring, whether he was sure that he could be ready at a certain hour on the ensuing morning. "Not so ready," answered Lord Stafford, "as I shall by the next day: but I would rather sink down in the place were I stand, than

put off the trial. Sir W. Jones opposed the respite of a day. The Lord High Steward suggested, that a single day's respite might not be attended with inconvenience ; and that Lord Strafford had two whole days allowed him, after the close of the prosecution, for preparing his answer. " My Lords," said Sir William Jones, " we do not presume at all to offer our consent, to what time the court shall be adjourned." " No," observed the Lord High Steward, " we do not ask your consent." " And I hope," replied Sir William Jones, " your Lordships will not ask the prisoner's consent, nor do it by his discretion." Here the Lord High Steward repeated with emphasis the well-known words of the satirist— "*De morte hominis non est cunctatio longa !*" Still Sir William Jones strenuously opposed the adjournment for a second day ; and at length, against the pressing suggestions of the Lord High Steward, it was resolved to proceed on the following morning. This is another instance of the harshness and unrelenting zeal, with which the managers pressed on the prosecution. [NOTE D.]

P. 1377.  
Third day.

On the third day of the trial, before the witnesses on the part of the defence were examined, Dugdale was called up again, and, in

answer to questions put on behalf of the accused, said, that fifteen or sixteen years ago, when he first heard of the plot for restoring the catholic religion, a preparation was made, of arms and men, against the King's death : the number of the men was not then named, but of late he had heard that 30,000 men were to be raised beyond sea ; and some of the priests had said, that if there was occasion, they should have at least 200,000, all catholics, all in arms, to assist them ; that fifteen or sixteen years ago, when he heard of the plot, he did not hear of Lord Stafford being among them. He still persisted in saying, that Lord Stafford had first spoken to him at Tixall, Lord Aston's place, about the end of August or beginning of September, 1678, but could not say positively which of the two months, and affirmed that he had not, on the trial of Sir G. Wakeman, sworn it to have been in August.

To contradict this latter part of his statement, the Marchioness of Winchester, and the daughter of Sir G. Blount, proved, that they were present at Sir G. Wakeman's trial, and that Dugdale then swore positively, that the consultation at Tixall, when Lord Stafford was present, took place in August. In addition to this, three witnesses proved that Lord Staf-

P. 1382.

ford was from the 17th of August to the 2d of September not at Tixall, but at Bath, whence he paid visits to the Marquis of Winchester in the neighbourhood, and that on the 2d of September he went to London: he was not at Tixall before the 12th of September. [NOTE E.]

- P. 1587. On being re-examined as to the offer of 500*l.* from Lord Stafford, Dugdale asserted again, that Lord Stafford offered him that sum in his lodging chamber at Tixall on the 20th or 21st of September, one morning before he went to see a race; that Lord Stafford sent his page for him, and, on his entering the chamber, dismissed the page. To contradict this account given
- P. 1589. by Dugdale, a person of the name of Furnese, (Lord Aston's page) was called, who stated, that he remembered the day of the race; that, on that morning, Lord Stafford did not first send for Dugdale, but Dugdale applied through the witness to be allowed to speak to Lord Stafford, having a request to make, that he would ask Lord Aston for his permission to go to the race: that he mentioned this to Lord Stafford, who desired Dugdale to come into the room. The witness then stated what passed in the room between Lord Stafford and Dugdale, which related only to Dugdale's going to the



race, and that he was in the chamber the whole of the time with Dugdale, and continued there some time after Dugdale had left the room, and was not during any part of the time desired to quit the chamber.

It will be remembered, that Dugdale, in one part of his evidence on his first examination, swore that he had given up an estate, of the value of 400*l.*, for the purpose of encouraging the design, and that he had promised to add a hundred pounds more. The evidence of P. 1394. Sawyer applied to this, and to another part of his statement also, in which he swore to his having been acquainted with a plot for fifteen or sixteen years. Sawyer stated, that Dugdale left Lord Aston's house for debt, the latter end of November or beginning of December, 1678, and was then taken up by the watch, and carried before two justices at Tixall, (Sir Walter Bagott and Mr. Kinnersley,) who were about to commit him to prison. The witness saw Dugdale in this situation, and Dugdale desired him to go to Lord Aston, and beg him to own him as his servant, for that he was so much in debt, he should else be undone for ever. The witness was going to Lord Aston for this purpose; but in the mean time another person, of the name of Philips, told the witness, he had

heard Lord Aston declare, he would not own him as his servant, for that it was his (Dugdale's) own act and deed. The witness informed Dugdale of this, upon which Dugdale rose up, and swore, he would be revenged on Lord Aston, if ever it should be in his power. The witness saw Dugdale three or four days before he began to peach, and mentioned to him, that it was reported he would be a peacher : Dugdale took up a glass, and with an oath, said, " I wish this may be my damnation and my poison, if I know of any plot or any priests."

" I ask you then, (said the Lord High Steward,) if you thought him an honest man or a rich man ?"

" No, truly, my lords, for I will tell you more than that. My Lord Aston employed him to be his bailiff, to receive his rents, and pay the workmen their wages." — The witness then stated instances of his receiving money from Lord Aston on account of the workmen, and withholding it from the workmen, who complained to Lord Aston.

P. 1597.

Philips, the parson of the parish of Tixall, stated, that Dugdale had urged him, and at last prevailed upon him, to request Lord Aston to own Dugdale as his servant ; for, if Lord Aston would not own him, he did not know

what to do with himself; but if Lord Aston would own him, he might be free from the gaol and the oaths, and escape the troubles which were upon him. Lord Aston replied, "It was his own act and deed, and that he would have nothing to do with him: the justices might do what they chose with him." In a later stage of the trial, Dugdale admitted, in answer to a question from the Lord High Steward, that he was in custody for debt, when he made his first affidavit. P. 1447.

Sir Walter Bagott, a justice of the peace, proved, that when Dugdale was brought before him in custody, on suspicion of being engaged in the plot, he took the oath of allegiance and supremacy, and being pressed to declare what he knew, denied all knowledge of the plot. Mr. Kinnersley, who was present at the same time, proved the same facts. Sir Thos. Whitgrave, another justice, examined Dugdale about the end of November or beginning of December, 1678, while he was under arrest. "I told him," said the witness, "he might do himself a kindness, serve God, and oblige his King and his country: I am confident you know of this horrid plot; do not stifle your conscience with any oath of secrecy, but let it come out. Many, I

P. 1397.

P. 1339.

told him, strained their consciences, to serve their interest; but you may clear your conscience, and at the same time promote your own true interest." He replied, as he hoped to be saved, he knew nothing of it.

P. 1400. Three witnesses, Robinson, Morrall, and Holt, were called to prove that Dugdale had endeavoured to persuade them to swear falsely against the prisoner. (NOTE F.) Robinson stated, that he had known Dugdale about five years; he met him about Midsummer, 1679, in London; Dugdale took him to a public house and treated him, and asked him what made him so dejected. The witness answered, he was not well, and poorer than he used to be. Dugdale told him, he should not want money while he had any, and if he (the witness) would be ruled by him, he would furnish him with money. He told the witness, he could put him in a way to get money, if he would come in as an evidence against Lord Stafford. The witness said, he did not know Lord Stafford. And after he had said so, Dugdale offered him money, to be a witness.

P. 1402. Morrall said, he had known Dugdale for twelve years; that in August, 1679, Dugdale mentioned the plot to him, saying, "You know as much of the plot as myself." "I told him,"



said the witness, "I was innocent of the thing." He repeated with an oath, that I knew as much as himself. Then, said I, if you know no more than I do, you know no more than my Lord Mayor's great horse. On this, Dugdale took the witness aside. "Come," said he, "you are a poor man, and live poorly; I can put you in a way, whereby you may live gallantly. I will give you fifty pounds, if you will swear against Mr. Howard and several other gentlemen of the country, and fifty pounds more, when the thing is done." "What were you to swear?" asked the Lord High Steward. "That they were at such a meeting at Mr. Aston's, upon the conspiracy of the plot." Holt stated, that Dugdale had P. 1403. sent for him, and when he saw him, told him privately, that if he would swear, that Walter Moore had carried Evers away, he (Dugdale) would give him forty pounds.

An information was read out of the Journals of the House of Lords, which Dugdale had made before two magistrates, (Mr. Lane and Mr. Vernon,) on the 24th of December, 1678. The informant at that time said not a word as to the consultation at Tixall, or the resolution to kill the King; not a word as to the offer of 500*l.* from Lord Stafford, or as to Lord Staf-

ford's proposal to him to kill the King ; nor a word as to the avowal of Lord Stafford's enmity against the King. These were among the strongest and most striking parts of his evidence at the trial ; but it is remarkable, that on each of them the information was entirely silent.

P. 1423.

To contradict that part of Turberville's evidence, in which he spoke of his having seen Lord Stafford at his house in Paris, when he was confined by the gout and had his foot on a stool, two servants of Lord Stafford were called. They stated, that they were with their master at Paris ; that they did not once see Turberville ; that Lord Stafford had not the gout during his stay at Paris, nor was he ill any part of the time, nor had his foot on a stool ; nor had he the gout for six or seven years, while they were in his service.

P. 1426.

Turberville's information was then read, bearing date the 9th of November, 1680, which was some days after Lord Stafford's commitment to the Tower. The principal points, in which the information varied from the evidence given by the witness at the trial, are these : that, in the information, he stated he had been with Lord Stafford at Paris for three weeks, but at the trial he said, he was with

him two weeks; at the trial he stated, that Lord Stafford had written a letter to inform him of his intention to sail from Calais instead of Dieppe, but in the information he did not mention the letter, stating the fact in this manner, "that he (the informant) went before to Dieppe, the Lord Stafford went with Count Grammont by Calais, and sent this informant orders to go for England, and attend his Lordship at London." He stated also in the information, that on his return to England Lady Powis and Earl Powis, and all the rest who had encouraged him to go, became his utter enemies, threatening to take away his life, and to get his brother to disinherit him; which last, he added, had been compassed against him.

Three witnesses proved, that Lord Stafford P. 1424. sailed from Dieppe, not from Calais. A witness also proved, that Turberville, on his return to England from Douay, came to Lord Powis's house, had his bed there, and was well received: he mentioned also a circumstance, to P. 1428. show that Lord Powis must have known of his being in the house. Turberville's brother P. 1429. was then called, and he stated, that Turberville's friends assisted him on his return to England, and were not angry with him, nor at



any time gave him an angry word, nor forbade him their houses. He appealed to the witness (Turberville,) for the truth of this statement, &c. to which Turberville replied, "These are people that take not the oaths of supremacy and allegiance, and therefore are not fit to be witnesses." "Now," observed Lord Stafford, "your Lordships see what a villain he is." [NOTE G.]

P. 1434.  
4th day.

On the opening of the fourth day, the Lord High Steward recapitulated the evidence, which Lord Stafford had produced on the preceding day, and stated the substance, as Lord Stafford himself acknowledged, with great fairness and truth. Witnesses for the defence were then called.

P. 1436.

Porter stated, that Turberville had said to him, about a year before the trial, at Lord Powis's, how much concerned he was that Lord Powis should be troubled about the plot; for he verily believed, that neither he nor the rest of the lords were in the plot, and the witnesses who swore against him, he believed, were perjured, and could not believe any thing of it. The witness told him, that if there was such a thing as a plot, he (Turberville), having been beyond sea, must certainly know of it; on which Turberville said, as he hoped for salvation he knew nothing of it, neither directly



or indirectly, against the King or against the government. Turberville added, that although he was low and his friends would not look upon him, yet he hoped God would not so desert him as to let him swear against innocent persons, and forswear and damn himself. Turberville said the same at three different times and three different places.

Q. — How came he to say, he hoped God would never so forsake him, &c. He was not before called to be a witness.

A. — Some of his friends said, they were fearful of him, in regard he was reduced to poverty.

Q. — Who were fearful?

A. — His brother and sister.

Q. — Did he notice to you, that they were afraid he would come in?

A. — Yes. Turberville told me himself, that they heard he would come in.

Yalden, a barrister of Gray's Inn, said he P. 1437.  
knew Turberville, and, in a conversation with him on the state of the times, he cried out, "There is now no trade good but that of a discoverer: but the devil take the Duke of York, Monmouth, plot and all, for I know nothing of it."

Oates was called up again, and some ques- P. 1439.  
tions put at the desire of Lord Stafford. The

following examination affords a tolerable specimen of Oates's evasive manner of answering.

L. STAFFORD. — The witness said, that he, being a minister of the church of England, did seemingly go over to the church of Rome, or some such words; I desire he may answer that first.

OATES. — Yes, I did say, I did but seemingly go over.

L. STAFFORD. — I desire to know, whether he was really a papist, or did but pretend?

OATES. — I did only pretend: I was not really one, I declare it.

L. STAFFORD. — He is called Dr. Oates: I beseech your Lordships to ask him, whether he were a Doctor made at the universities here, or abroad?

OATES. — My Lords, if your Lordships please, any matter that is before your Lordships, I will answer to it; but I hope your Lordships will not call me to account for all the actions of my life. Whatever evidence is before your Lordships, I will justify.

L. STAFFORD. — He is called a Doctor, and I would know, whether he did never declare upon his oath, that he took the degree at Salamanca?

OATES. — My Lords, I am not ashamed of any thing I have said or done ; I own what is entered as my oath before your Lordships, and am ready to answer it ; but I am not at all bound to say, what does not at all concern this business.

L. STAFFORD. — I say, my Lords, it is entered upon your Lordships' books, that he did swear at the council, he was at Madrid with Don John of Austria ; I would know of him, whether he did so ?

OATES. — My Lords, I would have my Lord to propose the question to the court of Peers.

L. H. STEWARD. — Have you sworn any thing of Don John of Austria ?

OATES. — My Lords, I refer myself to the council-book.

L. STAFFORD. — I beseech your Lordships, I may have that book ?

L. H. STEWARD. — I believe it is in the narrative. If you will not acknowledge it, we must stay till the journal is brought.

OATES. — My Lords, if your Lordships please, I will repeat as well as I can, what was said at the council-table ; but I had rather the council-book were fetched, because I am upon my oath. But, my Lords, I always

thought the council-book is no record upon any man.

L. STAFFORD. — I desire it may be produced, or he own that he said so.

L. H. STEWARD. — What you said at the council-table you said upon your oath, and it is lawful to lay it before you.

OATES. — But if your Lordships please, as to what was said at the council-table, if my Lord will bring any one *viva voce* to swear what was said by me there, that will make something.

L. H. STEWARD. — That may be material, as he says, that your Lordship should bring somebody to swear, he said so; for the clerks may mistake him.

L. STAFFORD. — If your Lordships please that the book may be sent for, I will make it out.

SIR W. JONES. — It could not be read, if it were here.

L. H. STEWARD. — If the clerks will swear what is in the books, it may.

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P. 1443.

L. STAFFORD. — He says, he feigned to be a papist, when he was not; and that they shewed him presently all my letters. Did he keep any one of my letters?



L. H. STEWARD. — Have you any one of my Lord's letters by you?

OATES. — My Lords, I could not keep any letters sent to the fathers. I had a sight of them; but none of them to my particular use.

L. STAFFORD. — Does he know my hand? Did he ever see it in his life?

OATES. — Yes. I do know his hand. I believe I have a letter of my Lord's by me, but not about me; — it is of no concern; — I am sure, I have one of my Lord Arundel's.

L. STAFFORD. — But he says, he has a letter of mine. Let him show one of my letters.

OATES. — He writes a mixed hand. I think it is but an indifferent one.

L. STAFFORD. — So many commissions, and so many letters, as are spoken of, — and not one to be found or produced!

L. H. STEWARD. — Can you send for the letter?

OATES. — My Lords, I am not certain of that.

L. H. STEWARD. — Where did you see my Lord write?

OATES. — At Fenwick's, my Lords, when I carried the letter to the post.

L. STAFFORD. — How often hath he seen me at Fenwick's?

OATES. — My Lords, not above twice, if twice.

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P 1445. L. H. STEWARD. — Did you, when you had a sight of these letters at St. Omers, take any notes out of them?

OATES. — What notes I did take, if I did take any, I have not now in being: but I do not remember that I did take any. If they had known, that I had taken notes out of their papers, it would have been prejudicial to me, and endangered my life.

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P. 1447. L. STAFFORD. — My Lords, Dr. Oates says, I offered him half a crown, and he refused it: I call Ellen Rigby to prove, he was so poor, he asked me for sixpence.

OATES. — I will save my Lord the trouble of proving any such thing. My Lord Stafford says, I was a poor man, and had not sixpence in my pocket. I can make it appear to the house of Lords, that sometime, since I came in upon this discovery, I have not had twopence in my pocket, and sometimes not sixpence; but a man's poverty is no objection against his honesty.

L. STAFFORD.—Then, my Lords, pray ask him, whether he did not swear at a former trial, he had spent 6 or 700*l.* more than he got?

L. H. STEWARD.—Did you say at a former trial, you were 5 or 600*l.* out of pocket?

OATES.—My Lords, I will satisfy this House what I said. My Lords, I had a friend of mine presented me with a 100*l.*; I name not his name, but, if that be questioned, he is a Peer of this House, and will justify it; I had 100*l.* for my narrative; I had 100*l.* for taking some Jesuits; I had, for some other copies that I printed, a matter of 50 or 60*l.* And now I can make it appear, that, as to those sums which I received in gross, I have spent them all and more in this service; for I have none of the money now by me.

L. STAFFORD.—He makes out but 350*l.* and he swore he was out of pocket 700*l.*: but he does not swear a tittle true, nor is any whit to be believed.

OATES.—If you expect I should prove it, I can prove it now.

MANAGERS.—Be quiet, Dr. Oates, we will do you right anon.

Part of Oates's examination, which had been P. 1415.  
taken before the House of Lords, on the 31st

of October, 1678, was read in evidence. It was in these words, "The Lord Chancellor, by directions of the House, informed Oates, that the Lords expect not his entering into particular circumstances, but if there be particular persons concerned, of what quality soever they be, the House expected, he should name them; but he named none but those he had mentioned in his narrative, nor could name any other person."

L. STAFFORD.—At that time he said, he knew no persons more than he had discovered; and afterwards did he not accuse the Queen, and several others? If he said true, he then knew nobody more; if not, he is foresworn.

SIR W. JONES.—Pray, prove he did accuse the Queen!

However, it was afterwards admitted, that he had at a later period accused the Queen; and this is to be taken as an undisputed fact in the case. [NOTE H.]

Evidence  
in reply.

The managers produced evidence in reply, with a view to confirm the testimony and support the character of their own witnesses, as well as to impeach the character of some of the witnesses on the opposite side.

P. 1449.

First, the managers produced evidence in support of Dugdale. Two witnesses, Hanson and Ansell, were called to prove, that they had



seen Lord Stafford and Dugdale together at Tixall, about two years before. They heard nothing pass between them. One witness could not say, whether it was in summer or winter : Dugdale called him to Lord Stafford, in consequence of which he went to Lord Stafford, and when he returned, Lord Stafford and Dugdale were together at the parlour door. The other witness, as he passed through the court-yard, saw Lord Stafford and Dugdale walking together, but could not say how long they were together, and did not hear any discourse between them.

Witnesses were called to prove the precise P. 1453. date, and earliest report, of Sir Edmondbury Godfrey's death ; a point, upon which some imputation had been thrown on Dugdale. The evidence on this subject has been omitted, in the above statement of the case, as immaterial and irrelevant : for the same reason, the evidence in reply will not be noticed.

To impeach the character of Robinson, Mr. P. 1457. Booth, a member of the House of Commons, and the Earl of Macclesfield, were called. The former stated that Robinson was loose in his habits, profane and atheistical in his conversation, and that he was reputed to be a notorious cheat. The Earl of Macclesfield men-

- tioned a transaction, in which Robinson had been guilty of fraud. Lord Stafford here assured the House, that if he had known Robinson to have been a man of bad character, he would not have called him as a witness ; at the same time observing, that if Dugdale knew him to be a cheating fellow, he might think him the more likely to take money to forswear himself. A witness, of the name of Rawlins, stated, that Holt passed for a lewd, loose, drunken fellow ; and that he knew no harm of Dugdale. Launder gave the same account of Holt. Thorne proved, that Morral was a man of indifferent character.
- P. 1460.
- P. 1478.
- P. 1461. A witness was allowed to prove, that, on some former trial, the steward of Lord Belasis had offered him a bribe of 700*l.*, if he would give false evidence against Dugdale.
- P. 1463. Two women, Elizabeth and Anne Eld, the persons mentioned by Dugdale as having assisted him in burning the letters on the Popish plot, proved, that, at the time of his quitting Staffordshire, he desired them to burn some bundles of papers, saying, at the same time, that the times were troublesome, and he would not have all his papers seen. Whether they were letters, the witnesses could not say : they might be the accounts of the house. One of

the witnesses asked, if she should burn a book, which was not thrown into the fire with the rest of the papers; Dugdale said, "No, there is no treason in it." — "Was there any thing of treason in the others?" asked the witness. "Do you think there is?" replied Dugdale. The same witness stated, that Dugdale, on one occasion, in Staffordshire, took up a glass, saying, "I wish this may be my damnation, and that I may sink in the place where I stand, if I know any thing of the plot."

Three witnesses, Noble, College, and Boson, P. 1465. proved, that Dugdale had made a demand on Lord Stafford, long after his imprisonment, only a few weeks before the trial; he stated it to be a demand on an unsettled account; Lord Stafford's answer was, that he would send for Dugdale in a short time, as soon as he could have the advice of a friend, to whom he had entrusted all his books. The amount of the demand was represented by Dugdale to be at least 200*l*.

Whitby, a justice of the peace, called to speak to Dugdale's character, said, he had, in his dealings with him, always found him honest, and never heard the contrary. Southall, a coroner of the county of Stafford, said, Dugdale had always, till of late, borne a good reputation.

P. 1470.

Southall gave a full account of the circumstances, under which Dugdale made his first discovery. The witness saw him at Stafford on the 23d of December, 1678, when he informed him, that a plot had been discovered in London, and communicated to him his suspicions, that part of the plot had been acted at Tixall, and that, as he (Dugdale) had the management of the household of Lord Aston, he must necessarily know something of the plot. Dugdale looked earnestly at him, but answered nothing. Southall conjured him, on his duty as a subject, and on his oath of allegiance, to speak, and declare all he knew. Dugdale paused awhile : then asked, how he should be secure of his life, if he made a discovery. Southall assured him, that the King had in his proclamation promised a pardon. " But you have only a short time for making the discovery ; this is the 23d ; you ought to discover before the 25th." Dugdale stood pausing awhile. " You need not," said Southall, " question His Majesty's gracious promise ; and to encourage you, there is not only an assurance of pardon, but a promise of reward of 200*l*." Said Dugdale, " If I do discover any thing of my knowlege, I matter not, nor do I desire, His Majesty's money, so



I may be secured of my life." Southall assured him that he would take special care of his pardon, and promised to write to the Lords in his behalf. Dugdale then agreed to make a discovery, and mentioned some particulars. But Southall said, he wished him not to say more at that time. On the day following Southall communicated what had passed to Mr. Lane and Mr. Vernon, two justices, who on the same day took the examination, which has been before mentioned.

Q.—Do you remember, asked the Lord P. 1471. High Steward, what he mentioned of my Lord Stafford? what he said of him?

A.—Truly, my Lords, I can only tell what he said at the first examination. He told me, the first time my Lord Stafford spoke with him was at Tixall Hall, between the gate and the hall. Lord Stafford, going into the hall, told him, it was a hard thing, (or to that purpose,) that they could not say their prayers but in private; and after told him the same day or night, that they had some work to do, and he might (or must be) instrumental in it. This was the effect of what, he told me, passed the first time. Another time, I think he told me, he was to have 500*l.* to kill the King.

Q.—When did he tell you so?

A.—Not till Captain Lane examined him.

Q.—Did he swear that before Vernon and Lane?

A.—Yes, he did. I could give a breviate of what he swore then.

The notes, which the witness took at the examination before Lane and Vernon, were then produced and read. They agreed in substance with the greater part of the written examination of the 24th of December.

P. 1472.

These notes contained also an account, which Dugdale appears to have given to Southall on the 29th of December. On this last occasion, on the 29th, Dugdale mentioned the 500*l.* for killing the King; some declarations of Lord Stafford, which would show that he used Evers as his agent; a declaration of Lord Stafford to this effect, that the killing of the King was the only means of restoring the Catholic religion; and a letter from Lord Stafford to Evers, respecting the carrying on of the design here and abroad. It must not escape the reader that not one of these particulars had been mentioned by Dugdale in his examination before Lane and Vernon on the 24th of December, when he was called upon to make a full and complete dis-

covery, and for which he had received a promise of pardon.

The managers then produced evidence in support of Turberville.

Mort related a conversation, which had P. 1473.  
passed at Paris between him and Turberville, in which the latter told him of his having been introduced by his brother to the favor of a Lord, and that he was to go over with him to England in a yacht from Dieppe. [NOTE I.] The witness and he went to Dieppe together, and waited some time for the vessel, which did not arrive. In about a fortnight after they came to Dieppe, Turberville mentioned, that if they were to go to Calais, they might go over with my Lord. They did not go thither, but went over from Dieppe. The witness also stated, that Turberville, as they were walking together in Paris, went (as he said) to the place where some Lord lodged: the witness could not remember the title, but believed it to be the Lord Stafford.

Powell stated, that, about a year before P. 1474.  
the trial, Turberville told him he had much to say in relation to the plot, but did not mention any particulars. He said he was afraid he should not have encouragement enough to mention them, for some of the

witnesses had been discouraged, and he was afraid he should be so too.

P. 1475.  
& 1478.

Arnold, Hobly, Matthews, Seys, and Scudamore, spoke to the good character of Turberville. Lord Stamford and Lord Lovelace proved, that they had seen Lord Stafford walk lame into the House of Lords within the period of the last seven years.

P. 1482.

The Lord High Steward here enquired of Lord Stafford, whether he was near the conclusion of his defence. Lord Stafford complained of illness and want of rest, which had nearly disabled him from proceeding that night. "But," said he, "I will obey your commands, though I fall down at the bar." The Lord High Steward immediately proposed an adjournment, which was not opposed on the part of the managers.

P. 1483.  
5th day.

On the following morning, the fifth day of the trial, Lord Stafford informed the House, that he had been just furnished with the names of some fresh witnesses, who were material for his defence, and desired to be allowed to call some persons, for the purpose of discrediting the witnesses, who had been examined by the managers in reply to his defence. Sir W. Jones objected to this course,

P. 1484.



as necessarily leading to most inconvenient length, and perhaps to great delay ; and insisted, that the rule of the civil law, (*In testem, testes ; et in hos ; sed non datur ultra,*) should be observed on this occasion. Lord Stafford spoke with great feeling in support of his application, to be allowed to go into further evidence. “ I profess to Your Lordships, if I were alone concerned, I should not have moved it : but when I consider that my wife and children are concerned, I hold myself bound by the duty, which I owe to God and to them, to propose this to Your Lordships. I am pressed to it by my wife just now, since the House came in. I protest before God, for myself, I can look death in the face without being afraid ; but when I consider, in what condition I shall leave my wife and children, it moves me. I am not concerned at it for my own part, for I know I am innocent ; but I cannot forbear tears, when I consider them. It is not for myself, I take God Almighty to witness, that I weep. I could be content to speak a few words to Your Lordships, and submit to your judgment, and take my death, if you decree me to it. But I cannot forbear showing my

grief, when I consider my wife and children.”

The Lord High Steward suggested, that it might be desirable to hear the proposed evidence ; remarking, at the same time, that the practice, established in the court of Chancery, was, to examine fresh witnesses to the credit of other witnesses, and also to examine to the credit of such fresh-called witnesses, but no further. The objection, made by the managers, was at length withdrawn conditionally, and the witnesses were examined.

Fresh evidence in defence.  
P. 1492.

On the subject of Southall's character, Lord Ferrers said, he had been active in the late times against the King, and was considered ill-affected to the government. In answer to this evidence, the managers called Lord Broke, who said, he considered Southall to be an honest, able man ; and a member of the House of Commons said, he had found him to be one of the most zealous prosecutors of Papists in the county of Stafford.

P. 1486.

The evidence being now closed on both sides, Lord Stafford recapitulated the evidence, which he had produced in his defence ; and Sir W. Jones replied with great force and effect. He was followed by Sergeant Maynard and Sir Francis Winnington.

P. 1495.

The Lord High Steward, at the end of P. 1525. their speeches, reminded them, that they had not noticed an objection, which Lord Stafford had taken in the course of the morning; which was this, that witnesses, who swore for money, were not competent; and that this was a point fit to be spoken to, not so much for the weight of the objection, as for the satisfaction of the auditory. Sir Francis Winnington upon this observed, that the taking money to swear had not been proved: "let him prove his case to be so, and then we will give him an answer."—"My Lord Stafford," said the Lord High Steward, "if you can prove that they have had money to swear, Your Lordship urges that which will be material: but if it were only money to maintain them, that sure will amount to no objection."

Here Lord Stafford pressed again to have counsel allowed; and said, he was surprised to hear that the House of Commons and the House of Lords had at a conference adjudged it to be the law of Parliament, that impeachments should continue from Parliament to Parliament. The Lord High Steward asked the managers of the Committee, what objection they could have to the assigning of counsel for the purpose of

arguing objections in law. Sir William Jones answered, that if a prisoner in a capital case desire counsel, he must not only allege matter of law, but that which he alleges must also be matter of some doubt to the Court, and insisted, that not one of the points now urged had any thing doubtful in it. Lord Stafford suggesting, that counsel were ready in court to argue : — “if they be so,” said the Lord High Steward, addressing himself to the managers, “what hurt can there be in hearing of them.” — “My Lords,” said Sir William Jones, “whether you will hear an argument from counsel about the law of Parliament, I hope you will please well to consider.” And Sir Francis Winnington said, “We in the House of Commons do never suffer any counsel to tell us, what is the course of our House, and the law of Parliaments. If Your Lordships think fit to allow it, it is in your own power : but we, who are entrusted with the management of this cause by the House of Commons, have no direction to consent to such a thing.” The Lord High Steward waived this subject, by stating, that counsel should be heard upon the point, whether every overt act ought to be proved by two witnesses. But the counsel, being called upon for their argument, said,



they were not prepared to argue; and they seemed to admit, that the point had been settled in courts of law.

The Peers then adjourned to the Parliament Chamber; and on their return to their House, the Lord High Steward stated, addressing himself to the prisoner, that the Lords had considered the point as to the necessity of two witnesses to every overt act, and had directed that all the judges, who were in Lord Stafford's presence and hearing, should deliver their opinions, whether that point was in law debatable. All the judges (excepting the Lord Chief Justice of the Court of King's Bench, who was absent,) delivered their opinions in order. They unanimously agreed, that if several witnesses speak to the same kind of treason, although they speak to several overt acts at several times, the one of them speaking to an overt act at one time, the other speaking to an overt act at another time, yet keeping still to the same kind of treason, these are two sufficient witnesses within the meaning of the stat. of Edw. III. In other words, if two several overt acts conduce to the proof of the same species of treason, and one of such overt acts is proved by one witness, and the

Opinion  
of the  
Judges.

other overt act proved by another witness, the proof will be sufficient.

One of the judges, Baron Atkins, in giving his opinion, stated, among other reasons, one which drew from the aged Lord an animated reply. The judge said, "If the rule should be otherwise, it would touch the judgments, which have been given on this kind of proof; and what would the consequence of that be, but that those persons, who were executed upon those judgments, have suffered illegally? And therefore I am of opinion, it is not requisite, that there should be two witnesses to every overt act." The reasoning is bad, and mentioned in this place only for the reply. "My Lords," said the prisoner, adverting to this opinion of the judge, "I hear a strange position: I never heard the like before in my life. It is an argument, I hope, which will not weigh with Your Lordships or any body; for it is better, that a thousand persons, that are guilty, should escape, than that one innocent person should die; much more then, that it should not be declared, that such a judgment was not well given. [NOTE K.] I say nothing further as to the rest, but this stuck with me. I am sorry to hear a judge say any such thing; and though I am in such a weak

and disturbed condition, I assure Your Lordships my blood rises at it." The Court then adjourned.

On the opening of the sixth day, Lord Stafford requested permission to offer to the Court some points for their consideration. This being allowed, he suggested, first, that impeachments could not be legally continued from parliament to parliament: secondly, that an impeachment could not be legally prosecuted without a previous indictment: thirdly, that, if the witnesses were to be believed, the utmost of their proof would be, that he had spoken certain words, and that words are not overt acts within the meaning of the statute of treasons. He then adverted to the particulars of the evidence against him, and to his defence. He concluded by presenting a written paper, which he requested to have read by the clerk; adding, that he had been so much disturbed and distracted by the treatment which he had received out of Court, he felt utterly unable himself to read the paper. "Every day," said he, "since I came hither, there hath been such thrusting and hooting, by a company of barbarous rabble, as never was heard before, I believe. But it was at some distance for the chief part of the time,

P. 1535.  
6th day.

P. 1544.

and so it did not much concern me. But in the last night it was so near and so great, that it hath really disturbed me ever since : if it were not thus, I should not offer a paper to be read : I scarce know what I do or say." It was scarcely to be imagined, that human beings should have been so hard-hearted as to oppose such a request at such a moment. The committee protested against the clerk's reading it, on the ground of its being a dangerous precedent ; and Lord Stafford was obliged himself to read, raising his voice as loud as he could. In this paper he repeated some of the objections, which he had before made ; and at the same time he took the opportunity of remarking upon the vile character of the witnesses, and the large sums of money which they had received for giving evidence. "And now," added Lord Stafford, "I have said what I think convenient, though I think much more might be said to Your Lordships by an abler man. I hope I have done it sufficiently, nay, I am confident I have. And this I have done for the memory of that great and blessed King, who first made me a Peer ; that it may not be said, he did me the honour, forty years ago, to call me up to this dignity, and that I should fly in the face of his son in

P. 1547.



so horrible a manner as these men would have it believed. I owe it to the honour of my father and mother, who, I think I may safely say, were both honourable and worthy persons: my father was a learned man, and a wise man, as I may appeal to some of your Lordships who knew him well; I say, I owe it to their memory, and to the honour of the family, from which I sprung, which all the world knows what it is. And I should be an infamous man to dishonour them so much, as to bear their name and commit treason. My Lords, I owe it to my wife, who hath been a very kind wife to me as ever man had. I owe it to all my children, especially to my eldest son, who is a young man, and I may say, of far better parts and hopes than his father, and who, I hope, will serve his country. I owe it to all my friends and relations, for I would not have it said after my death, my wife was the widow of a traitor. I owe it to all these, and above all, I owe it to God Almighty; that when I come to be judged by him, I may give a good account of all with which he hath entrusted me."

On the seventh day of the trial, December 7th, 1680, the Lord High Steward took the votes of the Peers, as is usual, in the absence

P. 1551.  
7th day.

of the prisoner. Out of eighty-six Peers, fifty-five found the prison guilty: thirty-one voted not guilty. Lord Stafford heard the fatal verdict unmoved. "God's holy name be praised!" was all that he uttered. On being asked, what he had to say, why sentence of death should not be given? "I have little to say," he answered. "I confess, I am surprised at it; for I did not expect it. But God's will be done. I will not murmur at it. God forgive those who have sworn falsely against me." [NOTE L.]

P. 1554.

Lord Stafford then submitted, in arrest of judgment, that there had been an irregularity in the omission of the common form, of requiring him to hold up his hand, on his arraignment. But there was no ground for this exception, and the Peers unanimously held, according to the opinion of all the Judges, that the omission of the ceremony was not of any moment: that the only use of such a form is to ascertain the name of the prisoner; and when this is apparent, the Court often proceeds against him, though he refuse to hold up his hand at the bar.

The Commons, in a body, with their Speaker, repairing to the bar of the House of Lords, demanded judgment of high treason

against the prisoner. The Lords took into consideration the judgment to be pronounced. It was moved, that it should be simply for beheading, and after a debate, the Judges were required to give their opinion, whether any judgment, excepting that in the common form, would attain. They declared, that the Courts below could not take notice of any other than the usual judgment appointed by law.

The sentence of the law was then pronounced by the Lord High Steward, "with great solemnity and dreadful gravity\*," in a speech which is thought to have been one of the best that he ever made. After adverting to the prisoner's fallen state, the Speaker proceeded thus: — "That there hath been a general and desperate conspiracy of the Papists, that the death of the King hath been all along one chief part of the conspirators' design, is now apparent beyond all possibility of doubting. What was the meaning of all those treatises, which were published about two years since against the oath of allegiance, in a time when no man dreamt of such a controversy? What was the meaning of Father

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\* See the Description in Evelyn's Journal, vol. i. p. 531.



Conyers' sermon upon the same subject, but only because there was a demonstration of zeal, as they call it, intended against the person of the King?" \*\* Does any man now begin to doubt, how London came to be burnt? or by what ways and means poor Justice Godfrey fell? And is it not apparent by these instances, such is the frantic zeal of some bigotted Papists, that they resolve, no means to advance the Catholic cause shall be left unattempted, though it be by fire and sword." \*\* The Lord High Steward, concluded with these words: — "God forbid, your Lordship should rest upon forms: God forbid, your Lordship should be found among the number of those poor mistaken souls, whom the first thing that undeceives is death itself. Perhaps your Lordship may not much esteem the prayers of those whom you have long been taught to miscall heretics: but whether you do, or do not, I am to assure your Lordship, that all my Lords here, even they that have condemned you, will never cease to pray for you, that the end of your life may be Christian and pious, how tragical soever are the means that must bring you hither. And, now, my Lord, — this is the last time I can call you my Lord; for the next words, I am to speak, will attaint you."



Immediately followed the dreadful sentence, with all its horrible particulars.

“ My Lords, I humbly beseech you,” said P. 1558.  
Lord Stafford, “ give me leave to speak a few words. I do give your Lordships hearty thanks for all your favours to me. I do here, in the presence of God Almighty, declare, I have no malice in my heart to those who have condemned me ; I forgive them all.” He then requested to be allowed to see his wife, his children, and friends, and that an order might be made to grant him this last indulgence. This was immediately granted, and the Lord High Steward intimated, that the house would petition the King to remit every part of the sentence except the beheading. On hearing this, Lord Stafford burst into tears. “ My Lords,” he said, with great emotion, “ your justice does not make me cry, but your goodness.” These were his last words at the trial.

The warrant of execution was simply for P. 1562.  
beheading, remitting the other parts of the judgment. The sheriffs, Bethell and Cornish, having some scruple, or at least pretending a scruple, respecting the legality of the warrant, as not conforming with the sentence, applied to the House of Peers for instructions. The

Peers declared, that the King's writ ought to be obeyed. The sheriffs expressed the same scruple in an application to the House of Commons; and the Commons resolved, that they were *content*, that the sheriffs should execute Lord Viscount Stafford by severing his head from his body. The sentence was accordingly executed on the 29th day of December.

P. 1564. Lord Stafford died with perfect calmness, and the most solemn protestations of innocence. "I am," said he, "brought this day hither, by the permission of Almighty God, to suffer death, as if I were guilty of high treason. I do most truly, in the presence of the eternal, omnipotent, and all-knowing God, protest upon my salvation, that I am as innocent, as it is possible for any man to be, so much as in a thought, of the crimes laid to my charge." At the close of his speech, he said, "I do now upon my death and salvation aver, that I never spoke one word either to Oates or Turberville, or to my knowledge ever saw them before my trial: and for Dugdale, I never spoke to him of any thing but about a foot-boy, a footman, or foot-race, and never was then alone with him. All the punishment that I wish them is, that they may repent, and acknowledge the wrong that

they have done me. Then it will appear, how innocent I am. God forgive them! I have great confidence, that it will please Almighty God, and that he will, in a short time, bring truth to light; then you and all the world will see and know, what injury they have done me."

A bill, for the reversal of the attainder of Lord Stafford, appears to have been presented in parliament in the first year of the succeeding reign, and to have passed with little opposition through the House of Lords. In the House of Commons it was read twice; but went no further. At the time of the Revolution, when political animosity was at its highest pitch, it had been vain to expect a reversal of the sentence, even if the ruling party had thought it unjust. It has been reserved to the more liberal and peaceful æra of the present reign, to perform this last act of retributive justice, and to restore to a noble family the untarnished honours of their much-wronged ancestor. [NOTE M.]

At the close of these proceedings, it may, perhaps, be thought not without use, and not uninteresting, to take a general view of the great mass of evidence produced at the trial. And in order to keep the leading facts distinct and clear,

Examina-  
tion of  
evidence.



it will be most convenient to pursue the course adopted by the managers: to enquire, first, into the proofs of the *general* plot; and afterwards to consider, whether any participation in any *particular* plot, or whether any specific overt act of treason, was substantiated against the accused.

In making this inquiry, we must constantly bear in mind, what the managers understood, and what they intended to express, by the term, general plot. They did not understand by that term, merely conferences or designs among the Catholic Priests, to propagate their faith. By the charge of a general plot, they meant nothing less than a conspiracy to subvert the whole nation, to murder the King, to suppress the Protestant religion, and to destroy the government.\* This was not a plot of a few conspirators, or of recent date — “The plot,” said the managers, “was universal, and had existed for not less than fifteen or sixteen years.” [NOTE N.] It was not a plot hatched in an obscure street, or confined to a corner of the kingdom — “It alarmed all Christendom,” said one manager. “The treason did bestride two lands,” said another.

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\* See p. 1298. line 19.; pp. 1300, 1301. line 22.



What is still more strange and wonderful, the plot was no secret, but conducted without the least regard to secrecy or wish for concealment. The supposed conspirators were the most frank and communicative of men. We learn from the evidence of Smith, that the priests of Provence and Rome imparted to him their design, such as it was, without scruple or reserve, almost as a matter of course ; that the design was made the subject of college disputations, and of public discourses from the pulpit ; that he had free access to Coleman's letters, which were said to contain a full account of the plans in England ; that the design of killing the King, which was said to have been proposed by some of the priests, was the common discourse all over the country. Again, from the evidence of Dugdale we collect, that there was no disguise or concealment in the letters sent abroad by the supposed conspirators ; the murder of the King is said to have been mentioned in some of them and recommended, broadly without cipher or character ; that, with regard to the agents to be employed in the plot, it mattered not, whether they were men of quality, provided they were stout and trusty for killing the King ; that an indulgence, sent to this country from Rome, offering a free pardon

to any who would kill the King, was published openly in all private chapels ; and an intended general massacre was matter of public report. Again, we learn from Oates, that treasonable sermons were preached publicly in Spain ; and treasonable letters, giving an account of attempts on the person of the King, were shown to him, though a stranger, without reserve or hesitation ; and this, at all times, and in every place which he visited. It may be remarked also, that of all the numerous treasonable meetings mentioned by the six first witnesses, not one was spoken of as a thing done in the dark, or in a corner, or as accompanied with any degree of secrecy.

It is strange, that a plot, destitute of what is supposed to be essential to conspiracies, —without secrecy, without plan, without combination or confederacy, — should gradually spread from year to year, till at length (if the statement of the managers is to be believed,) it became universal. Stranger still, that this plot should in the first year of its birth be strong enough to fire the capital, (for to the Popish plot the managers imputed the fire of London,) and thence should spread for sixteen years together, threatening destruction to the state, no less than to the church : yet

that it should have been unknown to the government, or, if known, that it should not have been extinguished, not exposed, not checked, not even regarded. It is difficult to imagine the evidence, which could make such a story credible.

The greater part of the information given by the witnesses, relative to the general plot, was derived from the contents of letters said to have been seen by the witnesses in their travels. Not one of these letters was produced: not a copy, not an extract, not even a memorandum. The witnesses professed to give the contents of a multitude of letters from recollection, not having taken a note of any part at the time of reading, not having read them for a great number of years, and not being required, when they read them, to impress them on their memories, or to retain them for future use. To account for the absence of the letters, Dugdale stated, that the whole of the correspondence had been entrusted to him by the Jesuits — a most improbable circumstance — and that the letters had been burnt by his desire at the time of his absconding. An attempt was made to prove this fact; but it entirely failed.

The remarkable deficiency of confirmatory

evidence, where confirmation was so indispensably necessary, is another incurable blemish in this case. Dugdale spoke of an immense collection of arms, for the purpose of carrying the plot into execution. Arms are substantial things, and if they had existed any where but in the witness's imagination, some specimens, it may be supposed, would have been produced : but not a stand of arms, not a firelock, not a trigger, was vouched in confirmation. The same witness spoke of indulgencies received in this country, signed by the Pope himself, granting absolution for the murder of the King : and more than one witness spoke of commissions from the Pope, appointing to high commands and offices after the anticipated overthrow of the government : but no commission or indulgence was produced, although they would have convinced all the world of the truth of the story. Further, Oates spoke of books containing entries of payments to the supposed conspirators for their work in the plot : but not a book could he show. Such a signal failure of proof, in a case so full of improbabilities, ought at once to have led to an acquittal.

To examine the evidence more in detail —  
The first witness, Smith, gave a long account



of what he had heard abroad, but said very little respecting any proceeding in this country. He stated, that, on his return to England, he found the Popish clergy, with whom he conversed, of the same opinion as was entertained abroad, namely, that the Popish religion would soon be re-established; — an opinion which, whether well or ill founded, they might innocently express. He stated, further, that he had been directed to assist in a collection of money in the north, which was to be sent abroad, and which, he said, he supposed to be intended for carrying on the design; but, whatever his opinion might be, the money was collected for the professed object of being employed in the repair of a foreign college; and it is obvious, that if the real object had been to promote a design in this country, it would not have been sent abroad. It is to be remarked also, that the fact of a collection of money, if true, might have been easily confirmed: but no confirmatory evidence was produced. This witness stood unconfirmed in every part of his evidence, though he was of a character so dark, as to make every practicable confirmation indispensable. A renegade twice in religion: from the Protestant faith to the Catholic, again from the

Catholic to the Protestant: the first time under a promise of some lucrative employment, and a second time on the eve of the Popish trials. A hypocrite, always acting a part; at one place passing for a Jesuit, at another professing himself not to be a Jesuit; at one time the friend of the Jesuits, at another opposing them, though himself a professed Catholic; and opposing them, because (as he said) they were likely, from their influence with the Duke of York, to become the chief men in England; a reason, which should have induced him rather to assist them in their advance to power, since it was the promise of a lucrative employment among the Jesuits, which first tempted him to conform to the Catholic faith.

What degree of credit is due to the evidence of Dugdale and Oates, will be considered most conveniently in the sequel. But something must here be said of Jennison, the only other material witness, who was called to prove the general plot. He gave an account of a design, in which (he said) two Jesuits were engaged, one of them Coleman, the other his own brother, Thomas Jennison, both of them then dead; and the reader will judge, whether the least credit can be given to any part of his

story, after considering the following absurdities and inconsistencies, which his evidence disclosed. In the beginning of the year 1678, as the witness stated, the design of his brother and Coleman was to attain a toleration of conscience, which they proposed to accomplish by bribing the parliament. In a month or two afterwards their design was to procure the succession of the Duke of York, which was to be effected by means of commissions from the Pope, for raising the party upon the King's death. In a month or two after this, the plan was to kill the King. Ireland, it seems, proposed to the witness to assist in this undertaking of murdering the King, and offered him a bribe of 20*l*. "God forbid," said Jennison, surprised: "he would not assist for twenty times 20*l*." "Would he then recommend some Irishmen, stout and courageous?" He had no objection to that, and he accordingly named four men, "all gentlemen of his acquaintance." Ireland pressed him again to go along with him to Windsor, to assist them in taking off the King. But the witness still declined: "he did not think any man of estate would engage in such a matter, and he was himself heir to an estate." In other words, he would not himself be the assassin,



from fear of forfeiture ; yet would he recommend four of his acquaintance to be assassins, by which means, as he would have us believe, he thought his estate might be saved. Even if the account of this witness had been probable and worthy of credit, it related only to particular transactions, in none of which was Lord Stafford implicated ; and it failed in proving a general plot, for which purpose alone it was produced. It may be remarked, indeed, on all the first six witnesses, that none of them proved the existence of a general conspiracy. The utmost that they proved, (even if we give them full credit for every word in their evidence,) is a great multiplicity of insulated and unconnected facts, supposed to have been done at various times, in a long course of years, in various parts of the world, by a number of individuals who appear not to have acted in concert, nor to have been engaged in any common scheme or design of a political nature.

The notion of a general plot (on which the managers laid so much stress, and on which they raised the superstructure of the plots and designs imputed to Lord Stafford,) visionary as it now appears, was not too gross for the credulity and infatuation of those times. From



its obscurity and indistinctness, it was well calculated to excite the fears of the weak. It flattered the prejudices, and inflamed the bigotry of two parties, the one in the church, the other in the state. It recommended itself, in various ways, to the idle and the unthinking, who are always imposed upon by sounds, and take strong assertion for demonstration. And when the proposition of a general plot was once admitted, it gave credit to the charge of any minor conspiracy almost as a consequence, and independently of all proof. Another mischievous effect, resulting from the suggestion of a general plot, was the admission of hearsay to an unlimited extent; for a subject so general, it was supposed, would naturally admit of a very general kind of proof. Hearsay, even in the third degree, was received without scruple: and more than half the case, on the part of the prosecution, was composed of this deceitful species of evidence. [NOTE O.]

II. Having disposed of the first part of the case, the next question, and the only material question with reference to the present trial, is, whether Lord Stafford was proved to have been engaged in any treasonable plot, or to have committed any overt act of treason? The charge against him rested altogether on the

evidence of Dugdale, Oates, and Turberville, each of whom gave an account of transactions entirely distinct. The account of each, therefore, must be separately examined.

First, as to the evidence of Dugdale. If that witness is believed, Lord Stafford was guilty. Either Dugdale was the vilest of witnesses, or Lord Stafford was one of the worst of traitors. Is the witness then to be believed? To settle this question, let us, first, look at the situation in which he stood, in point of character and conduct. He was, by his own confession, engaged in the same design, in which he would have involved Lord Stafford; his testimony, therefore, required the most ample confirmation; but he was in every material part of his evidence, entirely unconfirmed. [NOTE P.]

The circumstances also in which he came forward to give information on the Popish Plot are not to be overlooked. He was not an informer, till after the commitment of the five Lords to the Tower, not until he had himself fallen under suspicion of being engaged in the Popish Plot, and not till he had been much pressed and urged to give information by a most zealous prosecutor of Papists, and had received a promise of pardon

with 200*l.* as a reward. "Have you seen the proclamation?" said Southall to Dugdale. "You have but a short time; only a day or two, to discover in."—"Well," answered the informer, "if I discover any thing of my knowledge, I desire not His Majesty's money, so I may be secured of my life." Such is his account of himself: whether he pretended fear, to give effect to his tale, or, if he did feel some touch of fear, whether it arose from thinking, what a fearful thing it was to fall under suspicion of the Popish Plot, is matter of conjecture. Let it, therefore, be taken as a fact, that he informed to save his life, not for the 200*l.*

Yet this man was not, on other occasions, so indifferent to money. Indeed, if we may judge from the number of bribes, which he said had been offered to him, he was regarded by those who knew him best, as the most mercenary of villains. At one time a commission in the army; at another, the full rank of a captaincy, with large pecuniary rewards; at another, 500*l.* for killing the King; not to mention a pardon from the Pope, and, to crown all, the honor of saintship in the Romish Calendar. It would not be imagined, that the same man, who was the object

of so many bribes, should himself have given up, as a voluntary subscriber, a considerable estate for the support of the Plot. Yet such is his story : "Willing," he said, "to contribute to the design, I made over an estate, which I had, of 400*l.* value, for that purpose, and for the praying for my soul, and because I saw money would be wanting, I promised 100*l.* more." This owner of real and personal property, it must not be forgotten, was nothing more than a menial servant ; had been in service all his life ; and so much in debt, that he was arrested by his creditors, a few days only before he began the trade of informer. There is only one way of clearing up these absurdities and inconsistencies ; and that is, by tracing them to their source. The incredible fact, of his having an estate, and giving it up for the use of the Popish Plot, rested altogether on his own evidence : but the probable fact, of his being arrested for debt, was established by other witnesses.

In weighing the credit of Dugdale's evidence, no stress is here laid on the inconsistency between his earlier statements, in which he protested his ignorance and disbelief of the plot, and his subsequent statements upon oath. For as those statements were



made before he came forward as an accomplice, (and, therefore, it is possible, might have been made at a time when he intended to keep back his information, and possibly for the very purpose of concealment,) the contradiction is not so clear and unequivocal, as to be absolutely decisive of the falseness of his evidence. There is another circumstance, also, apparently reflecting on the credit of this witness, and, if believed, absolutely destructive of his credibility, (namely, his attempt to suborn witnesses to give false evidence,) which is not here taken into the account, for this reason, because the persons, on whom the attempt is supposed to have been made, and who proved the charge of subornation, were represented to be men of dissolute habits. Now, although such men were the fittest to be used for such a purpose, yet considering the nature of the charge, and that it cannot be said to have been proved conclusively, it will be safer to dismiss the circumstance altogether, and not to admit into the argument any topic of doubtful authority.

All will agree, that a statement by a witness of Dugdale's character ought to be received with great caution and jealousy ; that it ought to be distinct and precise in its language, pro-

bable in all its circumstances, confirmed when capable of confirmation, consistent with itself, not inconsistent with former statements of the same witness, and not contradicted by other witnesses of unimpeached character. Let it be seen, whether Dugdale's evidence is of this description. Are the facts stated with distinctness and precision? Numerous instances might be cited, in which his statements are so indistinct, so vague, and so general, as justly to warrant the strongest suspicions of his falsehood and dishonesty. Such, for example, as the following passage, in p. 1315.: "I have of late several times been in company with priests and other gentlemen in the country, when they have had consultations, both for the introducing of their own religion, and taking away the King's life, which they did always intend to be about November, December, or January, 1678." Or the following passage in p. 1317.: "I have heard, that, about the time the King should have been killed, several should be provided with arms and such instruments, and rise all of a sudden at an hour's warning, and so come in upon the Protestants, and cut their throats: and, if any did escape, there

should be an army to cut them off in their flight.”

Then, his statements are as improbable and inconsistent with common sense as they are loose and indistinct. What, for instance, can be more improbable, than the account given of a letter sent by the post, which is said to have contained instructions to admit into the plot only such men as were strong and lusty for killing the King. What more improbable, than the offer of 500*l.* in plain terms, for murdering the King, and made by Lord Stafford to one almost a stranger, without any assurance or prospect of success, and without suggesting any scheme for its execution? Or what more improbable than this, that Lord Stafford should avow openly before a great number of persons, and the servant Dugdale one among them, that he had joined in the design of killing the King, from private pique? Such are the gross improbabilities in his evidence?

But, to try his evidence by another test, Was he always consistent with himself? Did he abide by his first statement? On the contrary, he frequently shifted and varied his statements; brought forward new facts from time to time, and kept the most important in re-

serve. Thus, in his first information of the 24th of December, before two justices, (when he was sworn to speak the whole truth,) the only passages, implicating Lord Stafford, were these two; the one, representing what Lord Stafford said, in the beginning of September, concerning the hardships which the Papists suffered, in being obliged to have their prayers in secret; the other, representing what Lord Stafford is supposed to have said, on the 20th of September, relating to a design in hand, for the undertaking of which Dugdale was to be rewarded. But in the next account, given by him, on the 29th of December, he mentioned, for the first time, this fact, that Lord Stafford had since the 20th of September offered him 500*l.* as to the carrying on of the plot; and had also informed him of a design to take away the life of the King and the Duke of Monmouth. Again, in the third and last account, which he gave at the trial, he varied in many respects the two former statements, and ingrafted many other facts, entirely new, and much stronger than any before mentioned; for instance, the consultation at Tixall, about the latter end of August or beginning of September, when Lord Stafford, Lord Aston, and others, are said to have been present, and a resolution



entered into to kill the King ; — the interview in Lord Stafford's chamber between him and the witness, on the 20th or 21st of September, when the offer of 500*l.* was made to him, in plain terms, for killing the King ; — the conversation, said to have passed in the dining room, as to Lord Stafford's motives for joining in the design ; — the meeting, which is said to have taken place at another time, respecting Dugdale's setting out for the purpose of executing the design. These are only a part of the new facts, brought forward at the trial for the first time. By this plan, of starting new incidents in the plot, as might best suit the occasion, the witnesses artfully contrived to keep alive the public curiosity ; at the same time that their new evidence, if false, was almost sure to escape detection.

But Dugdale was not only inconsistent with himself ; he was contradicted by other witnesses, in many important parts of his evidence.

1. It was proved, that on a former trial, he had sworn distinctly that the consultation at Tixall took place, not about the end of August or beginning of September (as he swore on Lord Stafford's trial), but in August expressly : and further, it was shown, that Lord Stafford was not at Tixall between the 17th of

August and 12th of September. 2. It was proved, that Dugdale was not, on the occasion mentioned by him, alone with Lord Stafford in his chamber; and, that while Dugdale was there, nothing of what he stated had occurred. 3. Dugdale represented himself to have been in possession of a considerable estate; but it was proved, that he was involved in debt, and in great distress. [NOTE Q.]

From this review of Dugdale's evidence, it appears, that we have an account, delivered by a witness confessedly of infamous character, containing a combination of circumstances the most improbable, inconsistent with itself, and at variance with his earlier statements, not confirmed in any particular, and, in some important parts, contradicted and disproved.

Roger North, who has drawn the character of the next witness to the life, may be allowed to introduce him to the reader. "He was a low man of an ill cut, with a very short neck; and his visage and features were most particular. His mouth was the centre of his face; and a compass there would sweep his nose, forehead, and chin, within the perimeter. *Cave quos Deus ipse notavit.*"\*

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\* Examen. P. 225.

The reader will recognize, in this description, the noted Titus Oates; a witness so infamous, and so universally allowed to be such, that perhaps some apology is almost necessary for noticing his evidence.

In reading the following account, given by Roger North, of Oates in his state of exaltation, it will be remembered, that he was at one period absolutely destitute, and afterwards suddenly grew rich by his discovery. "He was," says North, "now in his *trine* exaltation; his plot in full force, efficacy, and virtue. He walked about with his guards, assigned for fear of the Papists murdering him. He had lodgings at Whitehall; and 1200*l.* per ann. pension; and no wonder, after he had the impudence to say to the House of Lords, in plain terms, that if they would not help him to more money, he must be forced to help himself. He put on an episcopal garb, (except the lawn sleeves,) silk gown and cassock, great hat, satin hat-band and rose, and long scarf, and was called, or most blasphemously called himself, the saviour of the nation. Whomsoever he pointed at, was taken up and committed; so that many people got out of his way, as from a blast, glad they could prove their two last

years' conversation. The very breath of him was pestilential ; and, if it brought not imprisonment or death, over such on whom it fell, it surely poisoned reputation, and left good Protestants arrant Papists, and, something worse than that, in danger of being put into the plot as traitors !”\*

In the opening of his narrative, he requested the managers to leave him to his own method : they gave him the rein, and he delivered a rambling narrative, full of incongruities. He began with an account of his first intercourse with the priests, which affords a specimen both of his cunning and his impudence. “The priests,” he said, “told him, the Protestant religion was on its last legs ;” that, “to satisfy his curiosity, he pretended some doubts in his mind ;” that some of the Jesuits, with whom he conversed, “were not men for his turn, because they were men who had not any great degree of learning ;” that another person “was not for his turn, because he was religious for religion’s sake ;” that at length he pitched on the Jesuits, and “these were the men for his turn, because they were the cunning politic men.”

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\* Examen. P. 205.



The witness sometimes showed his cunning by introducing, as if casually and incidentally, a strong circumstance, which, if mentioned by itself, might have startled the hearer with its improbability, but, from being artfully interwoven with the main story, attracted less notice, yet at the moment produced its whole effect. When particularity would have been dangerous, he was as general as possible in his statement; and when he might be circumstantial without risk, he was in the opposite extreme of particularity and minuteness. His evasive and prevaricating manner of giving evidence, his duplicity in every dealing with the Priests, his use of false names and false dress, his abjuring at the altar the faith which he had professed, and afterwards protesting that this conversion was a pretence; these circumstances prove him to have been a consummate hypocrite. [NOTE R.]

In reading this witness's narrative, the reader will be struck with a great variety of facts so improbable, that they could not be believed, even from the mouth of an unsuspecting witness. Some of the improbabilities have been already mentioned. Only one other passage need be added; where the witness mentioned his having *read in a letter* at St. Omers an

account of a very shrewd attempt, which had been made upon the person of the King by Pickering, (the man, who, for attempting the King's life, was to have fifty thousand masses said for him,) but that the King escaped, from the loosening of Pickering's gun or pistol, and the shaking of his hand. This passage may with advantage be contrasted with another piece of evidence, on the same subject, given by Oates himself in a former trial ; where he said, that *he had seen* Pickering and Grove several times in St. James's Park, with pistols larger than common pistols and shorter than some carabines, watching for an opportunity to shoot the King : that their pistols were loaded with silver bullets : and that Pickering, for losing a fair opportunity of shooting the King, and for his carelessness in having a loose flint, underwent penance, and suffered twenty or thirty strokes of discipline.\*

For the greater part of the information contained in his evidence, he referred to written documents, none of which were produced, nor their absence satisfactorily accounted for. He was perpetually referring to letters ; some at Valladolid, some at St.

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\* See 7 Howell, p. 96.

Omers, some at Madrid, and some supposed to be written by Lord Stafford. On the subject of these letters, he was guilty of gross prevarication, and detected in a falsehood. How, he was asked, did he know Lord Stafford's writing? "He believed he had one of Lord Stafford's letters in his possession." Could he send for it? "He was not certain that he could:"—and he did not. Then, why not produce notes or extracts from the letters said to have been seen abroad? First, he insinuated that he had taken notes;—then did not remember;—then he admitted he had not taken any. But what was the reason of his not taking notes? "If I had," said Oates, "my life would have been endangered." Yet, from another part of his evidence we learn, that he could open sealed letters with impunity and without risk. Again, for proof of the fact of Lord Stafford having an appointment in the army, which, as Dugdale said, was to be raised beyond sea, to the amount of 30,000 men, (absurd and incredible on its face, yet the only material fact, which Oates attempted to prove against Lord Stafford,) he referred to a commission, said to have been brought from Rome;—but no commission was produced. Again, he swore,

that 5000*l.* had been actually paid, as part of the money to be given for poisoning the King : and for the proof of this incredible fact, he vouched an absent book :

“ A beggar’s book  
Outworths a noble’s blood.”

The remarkable style and manner in which the two last witnesses delivered their evidence, — their indirect answers, their evasions and subterfuges, their cunning and impudence, — declare them to be utterly unworthy of credit. “ *Videte quo vultu, quâ confidentiâ dicant; tum intelligetis, quâ religione dicant: nunquam ad rogatum respondent: semper accusatori plus, quàm ad rogatum: nunquam laborant, quemadmodum probent quod dicant, sed quemadmodum se explicent dicendo.*”\*

A few words will be sufficient to dismiss the last witness, Turberville, whose tale is, of all that were told at the trial, the least worthy of credit. This was the man, who left England, because here he had no hope of subsistence; and returned from France, (as he says,) because he found there nothing but

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\* Cic. Pro. L. Flacco, 4.



hypocrisy and villany. The account, which he gave, was not confirmed in any part, although, if true, it admitted of confirmation: for, his brother, who is said to have recommended him to Lord Stafford at Paris, and might have been called to give evidence, must have known, whether the witness was ever in that nobleman's presence.

His story was not only unconfirmed, it was contradicted in many particulars. First, his deposition, taken only three weeks before the trial, was at variance with his evidence. Secondly, he had been often heard to declare, about a year before the trial, his entire ignorance of every thing relating to the plot: and, it is to be observed, he had not the motive for concealment, which *accomplices* generally have, since, according to his own account, he was not an accomplice, nor in any degree involved in guilt. Thirdly, the fact, of his having been given up and deserted by his friends, as he swore at the trial, was most distinctly proved to be false.

But the story itself, which he told, is so improbable and so contrary to common sense, as not to be credible without confirmation. Who can believe, that Lord Stafford would make a proposal to a stranger, at a first interview,

in plain and direct terms, to take away the life of the King; not suggesting any plan for its execution, or any means of escape; neither offering, nor asked for, a bribe or reward of any kind, and not requiring an oath of secrecy for his own security. Who will believe, that the witness, after his return to England, “would not come near Lord Stafford, *because, not being willing to undertake the proposal, he thought himself not safe even from his relations,*” — when, it is certain, his relations could not have heard even a rumour of the proposal. Or, how can we believe, that he kept the proposal a secret for four years at least, from fear “that his brains would be knocked out, if he made the discovery sooner;” and that he was at last induced *by the King’s proclamation*, to make the discovery, — when we know the fact, (from Southall’s evidence,) that the proclamation was issued as early as the year 1678; whereas the witness did not give information for two years afterwards, and not till just on the eve of Lord Stafford’s trial. Such is the mass of absurdity, improbability, and falsehood, to be found in the narrative of Turberville.

And now, having arrived at the close of the evidence of these three miscreants, what must

we think of the result of the trial? What language can adequately describe that execrable sentence, which on such evidence doomed Lord Stafford to death? Witnesses of the vilest character, hired for their evidence, and paid at an exorbitant rate, unconfirmed in every statement, contradicting themselves, and contradicted by others, — such were the men, upon whose testimony Lord Stafford was adjudged to die. “*Nihil religione testatum, nihil veritate fundatum, nihil dolore expressum : contràque omnia corrupta libidine, iracundiâ, studio, pretio, perjurio reperientur.*”<sup>\*</sup> In any civil cause, the evidence of these wretches had been disregarded as beneath notice; but in a criminal case, and on a parliamentary impeachment, it was deemed sufficient for shedding of blood. The innocence of Lord Stafford is now universally acknowledged; and his trial stands on record, a monument to future ages, of the fatal effects of political violence and popular delusion. The language of one of the greatest Judges of modern times, expresses, not too strongly, the general feeling excited by the history of these iniquitous proceedings : — “Whatever

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<sup>\*</sup> Cic. pro L. Flacco, 11.

men might think of the conviction of the unfortunate Viscount Stafford, while their passions were warm, and their prejudices strong, yet now, when reason has resumed her seat, and sober reflection has succeeded to party feelings, there is no man who will not agree, in pronouncing the execution of Lord Stafford, a legal murder." [NOTE S.]



## NOTES.

## NOTE A. p. 357.

IT appears from Grey's debates, vol. vi. p. 320, that bills of indictment had been found by the grand jury, against Lord Stafford and the other four Peers. These bills were brought into the House of Lords on the 29th of April, 1679, by a writ of certiorari, issued by order of the Lords. A debate took place upon the question, whether the proceedings should be by the common law, or by impeachment? The Solicitor-General Winnington, on that occasion, is reported to have said — "If you go not by way of impeachment, the King and the people will lose their right by the 25th of Edw. III. That statute having great regard to the safety of men, does declare what shall be treason for the future; which is only a declaration of the common law, what was treason before that statute. It does not alter the common law, but enumerates many particular cases, and leaves the declaration of more treasons, than are particularly expressed in the statute, to Parliament. Whether trial or impeachment be the elder brother I cannot tell; but, I believe, the trial of a Peer in Parliament is more ancient than by indictment."

Serjeant Maynard said, "If this had been only to murder the King, then the prosecution might have gone on in the ordinary course of justice; but this plot is to destroy religion and the government. — I do not know, but that these things, if questioned in Parliament, may be declared treason. There may be such exorbitant crimes, fit for Parliament to consider, that no ordinary judge nor jury can take notice of; but Parliament may. It clearly appears, that there was a design to overthrow law, religion, and government; and that, in Parliament, would be declared treason. Therefore, it is better that way, than in the ordinary way of justice. — This concerns all the nation, and so it is more proper for an impeachment."

Sir Edward Seymour, the Speaker, said, "The first step you make in this matter is, to determine your resolution to impeach. The next is, the person whom you will impeach. Then you are actually to go to the Lords' Bar, and accuse the persons, and acquaint the Lords, that you will take time to make your charge out: and if the persons accused be at large, to desire, that they may be in custody. But these Lords being in custody already, that is out of doors. But you send not to other courts to stop proceedings — all courts do stop of course. The Lords cannot proceed originally to trial, unless the without-doors matter be certified to them from the court, where the indictment was found. But if the impeachment be brought up from hence, all proceeding below cease." Grey, vol. vi. p. 320. Hatsell, vol. iv. p. 141.

## NOTE B. p. 375.

Sir George Wakeman was tried for high treason, in July 1679, and acquitted. See 6 Howell, 591.

## NOTE C. p. 382.

The reader will find a very able and interesting review of the evidence of the three witnesses against Lord Stafford, in the 2d vol. of Hargrave's Jurisconsult Exercitations. I beg also to refer to some remarks, on the subject of the Popish Plot, among the notes of Sir Walter Scott on the Poem of Absalom and Achitophel; in his edition of Dryden, vol. ix.

## NOTE D. p. 398.

Sir W. Jones was one of the most distinguished lawyers of his time, a man of strict integrity, and of political principles leaning to the popular side; but he is represented by Bishop Burnet, who knew him well, to have been harsh and severe in his temper. As Attorney-General, he conducted the prosecutions for the Popish Plot, in which he was a most zealous believer. Towards the close of his days he is said to have regretted the share he took in those trials; and the deep anxiety, which he felt for the situation of his country, is supposed to have accelerated his death. See Sir Walter Scott's notes on the Poem of Absalom and Achitophel, note xxii. Burnet's History, vol. ii. p. 280.

## NOTE E. p. 400.

The witnesses, called by the prisoner, were not sworn. The Lord High Steward informed them,

before they began their evidence, that, although they were not upon oath, they were under a strict obligation of truth and honor. An order prohibiting the administration of an oath, had been made previous to the trial. (See 7 Howell, p. 1273.) This was conformable to the rule then established in the courts of common law.

NOTE F. p. 404.

Hence it appears, that it is competent to the party accused, in a criminal prosecution, to call witnesses in his defence, for the purpose of proving this fact, namely, that some other witness, who has given evidence on the part of the prosecution, solicited them to swear falsely against him. The proof of this fact would be a much more direct impeachment of the witness's integrity, than any that could result from the proof of a general bad character. It contaminates the whole of his testimony: for what man of principle would believe the suborner of false witnesses? If there could be any doubt upon the point, the allowance of such evidence on this impeachment, (considering the spirit with which it was conducted,) would be a very strong authority for its admissibility.

NOTE G. p. 408.

The evidence of Lydeot, in p. 1430, is omitted, as perfectly immaterial: for the same reason, some evidence in reply has been omitted. The defence of Lord Stafford was unquestionably much prejudiced by the incumbance of irrelevant matter, and by mismanagement.



## NOTE H. p. 416.

See Parl. Deb., vol. iv. p. 1050. One of the contrivances of Oates, and the other witnesses in the Popish Plot, was not to tell all at once, but to supply new information from time to time. "Every new witness that came in," says Roger North, "made us start. Now we shall come to the bottom! And so it continued from one witness to another, till at length it had no bottom, but in the bottomless pit." North's Examen.

## NOTE I. p. 423.

This sort of evidence, consisting of former statements by a witness, similar to those made by him at the trial, is not uncommon in the State Trials, but seems not to be admissible. Sometimes it was produced in chief; more frequently in reply, for the purpose of confirming a witness, whose credit had been impeached by proof of contradictory statements. But it is not of the nature of confirmation; and it leaves the specific ground, on which his integrity is impeached, unaltered and untouched.

## NOTE K. p. 430.

There is a valuable note in Howell, p. 1529, containing the remarks of Dr. Paley in disparagement of this sentiment, and also the vindication of the same sentiment in an Essay of Sir Samuel Romilly. A complete refutation of Dr. Paley's argument may be seen in *Philopatris Varvicensis*, vol. ii. p. 405. The sentiment, "that it is better that ten guilty should escape, than one innocent should suffer," may be traced as far back as Fortescue's *Treatise, De Laudibus An-*

gliaë: "Mallem rêverà viginti facinerosos mortem evadere, quam justum unum injustè condemnari." Cap. xxvii. The same sentiment may be found, where it would be least expected, in the summing up of the Chief Justice Jefferies on the trial of Algernon Sydney.

NOTE L. p. 434.

Among those who voted Lord Stafford guilty, were, the Earl of Sunderland, the Lord Privy Seal, the Lord High Steward (Earl of Nottingham), the Lord President. On the other side were the Duke of Newcastle, Earl of Denbigh, Earl of Clarendon, Duke of Norfolk, Lord Arlington, and Lord Halifax. It was observed, that all his own relations, of his name and family, condemned him, except his nephew, the Earl of Arundel, son of the Duke of Norfolk. Evelyn's Mem. vol. i. p. 531.

NOTE M. p. 439.

The four other Peers, who had been committed on a charge of high treason with Lord Stafford, were discharged on the 22d May, 1685; and the order for their impeachment was annulled. See Hatsell's Prec. vol. iv. p. 201.

NOTE N. p. 440.

The first witness, Smith, seems, from his own account, to have known of a design, (which was called by the managers the *general plot*,) for nine years at least. Dugdale fixed on a much earlier date: he said, he had been acquainted with it about fifteen or sixteen years. This period would just include

within its range the great fire of London in 1666; which, at the time of Lord Stafford's trial, was very generally attributed to the Papists. Thus, the plot would conveniently serve as an explanation of the fire; and the fact of the fire would serve as proof of the plot.

NOTE O. p. 449.

Roger North appears to be very near the truth, in the view which he takes of the Popish Plot. "All the while Coleman corresponded, (says that writer,) and as well before as afterwards, in the reign of Charles II., the plot was, to introduce the Catholic religion by such means as the politic ones of that interest thought most conducing; and that was, by a toleration of all dissenting sects, whereby to destroy the church of England established, and not by active force, murders, poison, assassinations, and the like; and not to grasp at the secular power directly, the friendship whereof they desired, to defend them in what they went about. And my reason for this is, that, after King James II. became possessed of the crown, and the whole active force of the nation was in his hands, who espoused the cause of his religion with all manner of zeal, that method of toleration, and no other, was pursued. The King had an army, but there was no show then of employing it that way. The Papists seemed all to decline ways of violence, and went into chicane, and matters of law, building upon a supposed power in the Crown of dispensing." Examen, p. 209.

Dryden, speaking of the Popish Plot, has said, in

a well known passage, that there was some truth in it.

“Some truth there was, but dashed and brewed with lies,  
To please the fools, and puzzle all the wise.  
Succeeding times did equal folly call,  
Believing nothing, and believing all.”\*

That there was some truth in some parts of the evidence, cannot be doubted: and upon this, as a stock, innumerable falsehoods were grafted. To the extent, perhaps, of conferences among the priests, for making proselytes and for propagating the Catholic faith, the narrative of the witnesses may be taken to be, in the main, probable and credible. But beyond this, the passage from Dryden is not to be trusted. As an authority in support of the general plot described by the managers, this great poet is not entitled to much credit. Dryden did not write *against* his religious prejudices; for he was not at that time a Catholic. As a poet, he wrote to be popular; and faith in the Popish Plot was one of the vulgar errors of the day. Nor could his opinions derive any weight from his personal character: for, having been bred up among the Puritans, he became the eulogist of Cromwell; afterwards he was a partisan of the church of England; and at last reposed his faith in the church of Rome.

NOTE P. p. 450.

If Dugdale's evidence against Lord Stafford was

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\* Absalom and Achitophel, part i. published in 1681; the year after Lord Stafford's trial.



false, and the treasonable part of the plot a mere fabrication, the witness, it may be said, in professing to be an accomplice, gave false evidence *against himself*. This voluntary, but not gratuitous assumption of guilt, for the purpose of fixing a false charge on another, though unheard of in modern times, was not unexampled in the worst times of our earlier history. And, among the Roman *delatores*, it is well known to have been a common practice. Dugdale knew that he was safe, and that he could not fail to be well rewarded, whatever he said against himself, provided only he said enough against the prisoner.

“A trade of swearing (observes Roger North,) prevailed, such as never was heard of since the Roman *delatores*. Oates had his pensions and lodgings, where he had his plate, kept his table, and lived like an epicure. Vast rewards were published by proclamation, for other discoveries; which, one would think, must bring out evidences enough. And the generality of the people had not the least reflection on the barbarity of such a proceeding, where men’s lives are concerned. Paid witnesses ever were, and must be, odious and discreditable; but now, few thought the payments large enough, but rather that swearing was slack for want of more.” Examen, p. 207.

Tacitus, in several passages, mentions the fatal effects of the *delatores*. And one of the most striking passages in the Panegyric of Pliny is that, in which he describes the misery of the Roman State arising from this cause, contrasted with its happiness under Trajan. “Vidimus delatorum agmen inductum, quasi grassatorum, quasi latronum. Non solitudinem illi, non

iter, sed templum sed forum insederant. Nulla jam testamenta secura : nullus status certus : non orbitas, non liberi proderant. Auxerat hoc malum Principum avaritia." — "Quam juvat cernere ærarium silens et quietum, et quale ante delatores erat ! Manet tamen honor legum, nihilque ex publicâ utilitate convulsum, nec poena cuiquam remissa, sed addita est ultio ; solumque mutatum, quod jam non delatores sed leges timentur." — Plin. Paneg. xxxiv. xxxvi.

NOTE Q. p. 458.

The managers, in answer to this proof, for the purpose (as they said) of showing Dugdale to be a man of property, gave evidence, that he had made a demand against Lord Aston, (with whom he had lived in service at Tixal,) claiming from him a sum of 200*l*. on an unsettled account. The demand was made on Lord Aston, while he was in the Tower under a charge of treason, and only a few months before Lord Stafford's trial ; but Lord Aston refused to make the payment. This evidence is so trifling, and fell so short of the mark, that it is not worth noticing, except from its bearing on Dugdale's character.

There is good reason to conclude, that he knew this demand to be unfounded. For, it may be remembered, when he was arrested for debt, and in distress, he sent a petition to Lord Aston, not claiming a debt due, nor asking for money, but entreating Lord Aston merely to own him as his servant, which he thought would be sufficient to rescue him from all his difficulties. This is strong presumptive proof, that no money was then due. How then is this fact of the demand to be explained ? It might be, that he

thought, Lord Aston, in prison, would not refuse to his accuser a sum of money claimed as a debt: or it might be, that the proof of the demand was prepared and kept in store, with a view to Lord Stafford's trial. In either point of view, the witness would be destitute of common honesty. It may be observed, also, that the refusal to comply with the demand was creditable to Lord Aston, and affords a presumption of his innocence, at least so far as he could be implicated by Dugdale's evidence. And since Lord Stafford and Lord Aston were represented by Dugdale to have been jointly concerned in one of the worst transactions mentioned in his evidence, the circumstance affords, incidentally, an additional argument for Lord Stafford's innocence, no less than for that of Lord Aston.

## NOTE R. p. 461.

Oates was tried for perjury on two several indictments, in the first year of the reign of James II., for having given false evidence on the trial of Whitebread and Grove, and was convicted on both trials. (See 10 Howell, p. 1227.) The sentence of the court upon him was, to pay 1000 marks upon each indictment, to be stript of his canonical habits, to stand in the pillory on two days successively in Westminster and in London, to be whipped by the common hangman from Aldgate to Newgate, and again within two days from Newgate to Tyburn, and to be pilloried four times in every year during his life, in four different places. In the first year after the Revolution, he presented a petition to the House of Commons, representing the cruelty of his sentence, and the sufferings

which he had endured. (See Parl. Deb., 23d May, 1689.) Nine judges declared, that the sentence was contrary to law, and ought to be reversed. But the Lords affirmed the judgment. (Parl. Deb., June 4th, 1689.) The House of Commons, upon this, resolved to bring in a bill to reverse the judgment. (Parl. Deb., June 11th, 1689.) The bill passed through the House of Commons, but failed in the House of Lords.

NOTE S. p. 468.

These words are said to have been delivered in the House of Lords by Lord Chief Justice Kenyon. See Hargrave's *Jurisconsult Exercitations*, vol. ii. p. 361.

END OF THE FIRST VOLUME.

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